

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 TYLER DIVISION
4 INTELLECTUAL VENTURES II LLC,) (
5 PLAINTIFF,) (CIVIL ACTION NO.
6) (6:18-CV-299-JRG
7 VS.) (TYLER, TEXAS
8) (
9 GREAT WEST CASUALTY COMPANY,) (MARCH 12, 2019
10 DEFENDANT.) (8:28 A.M.

11 TRIAL TRANSCRIPT OF JURY TRIAL
12 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP
13 UNITED STATES CHIEF DISTRICT JUDGE

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22 Official Court Reporter
23 United States District Court
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25 (Proceedings recorded by mechanical stenography, transcript
produced on a CAT system.)

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 Are the parties prepared to read into the record
6 those items from the list of pre-admitted exhibits used
7 during yesterday's portion of the trial?

8 MR. WILSON: We are, Your Honor.

9 THE COURT: Let's proceed.

10 You gentleman will identify yourselves, and then
11 proceed to make your offer.

12 MR. WILSON: This is Ty Wilson on behalf of
13 Plaintiff, Intellectual Ventures.

14 During yesterday's portion of the trial, Plaintiff
15 admitted the following exhibits: PX-205, PX-211, PX-212,
16 PX-213, and GWX-518.

17 THE COURT: Any objections from Defendant to that
18 offer by Plaintiff?

19 MR. ROGERSON: This is Paul Rogerson on behalf of
20 Defendant, Great West.

21 No objections.

22 THE COURT: All right. Does Great West have a
23 similar rendition to offer?

24 MR. ROGERSON: It does.

25 THE COURT: Please proceed.

1 MR. ROGERSON: Yesterday, Great West exhibit --
2 admitted the following exhibits: PX-233, PX-415, PX-417,
3 PX-547, GWX-9, GWX-73, GWX-120, GWX-122, GWX-134, and
4 GWX-484.

5 THE COURT: All right. Any objection from
6 Plaintiff?

7 MR. WILSON: No, Your Honor.

8 THE COURT: All right. Thank you, gentlemen.

9 All right. We completed the day yesterday with the
10 testimony of Mr. Steven Ponder.

11 Defendants, are you prepared to call your next
12 witness?

13 MR. GILLAM: Yes, Your Honor, we are.

14 THE COURT: Ask who is up next, Mr. Gillam?

15 MR. GILLAM: Chris Bakewell.

16 THE COURT: All right. Let's bring in the jury,
17 please.

18 COURT SECURITY OFFICER: All rise for the jury.

19 (Jury in.)

20 THE COURT: Good morning, ladies and gentlemen.

21 Please have a seat.

22 All right. Defendant, call your next witness.

23 MR. GILLAM: Your Honor, Defendant would call
24 Chris Bakewell.

25 THE COURT: All right. Mr. Bakewell, if you'll

1 come forward and be sworn.

2 (Witness sworn.)

3 THE COURT: Please have a seat on the witness
4 stand.

5 THE WITNESS: Thank you.

6 MR. GILLAM: Your Honor, I believe we've already
7 passed out the notebooks.

8 THE COURT: All right. In that case, you may
9 proceed with your direct examination.

10 MR. GILLAM: Thank you, Your Honor.

11 CHRIS BAKEWELL, DEFENDANT'S WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. GILLAM:

14 Q. Will you please introduce yourself to the jury, sir?

15 A. Yes, hi, good morning, my name is Chris Bakewell.

16 Q. And what are you here to discuss with the jury today?
17 What topics?

18 A. Well, I'm here to discuss if the issue of damages comes
19 up, I'm here to discuss a reasonable royalty.

20 Q. Could you tell us a little bit about yourself, where
21 you're from and what you do for a living, sir?

22 A. Yeah, sure. I'm from Houston. I am married. I've been
23 married for 27 years. I have three kids, two in college,
24 one who's a junior in high school. And I value intellectual
25 property for a living.

1 Q. In what particular areas do you value intellectual
2 property?

3 A. Well, sometimes for patent infringement cases like this.
4 Also, companies have to record amounts on their books when
5 they buy and sell companies. They have to attribute the
6 amount for intellectual property, and I -- I'll do that.

7 I'll help companies think through how to
8 commercialize their intellectual property rights, so
9 business strategy, consulting assignments. And I'll help
10 out with licensing once in a while.

11 Q. Do you have any idea how many times you have valued
12 intellectual property like this over the -- over your
13 career?

14 A. Well, I've been working for almost 30 years, and I'd say
15 it's easily hundreds of times.

16 MR. GILLAM: Can we pull up the first slide,
17 please?

18 Q. (By Mr. Gillam) Mr. Bakewell, do you have a slide that
19 summarizes your qualifications in this case?

20 A. Yes. That's what this slide summarizes. We just talked
21 a moment ago about where I work in Houston. I work for a
22 firm called Duff & Phelps. We have about 3,000 employees
23 around the world now. When I joined 11 years ago, we had
24 about 300. So we've been quite successful. And I lead our
25 Houston office.

1 And on global basis, I lead our -- what's called
2 our intellectual property advisory services practice, and we
3 do the types of things that I described a few moments ago.

4 Q. Tell us about your educational background, please, sir.

5 A. Sure. So I hold two degrees. I graduated from Bradley
6 University, which is a liberal arts college in -- right in
7 the middle of Illinois in 1990. And I have a MBA in
8 finance, also information systems, too, and -- from the
9 University of Maryland at College Park. I graduated there
10 in 1993.

11 Q. Did you have any honors or receive any honors or
12 recognition as a part of your education?

13 A. I did. It says there I was a graduate fellow in
14 graduate school. And I graduated with honors and had
15 scholarships in undergraduate, and that helped me pay for my
16 own education.

17 Q. What did you study when you were in college?

18 A. I studied finance mostly, also information systems and
19 computer science when I was an undergraduate.

20 My first job between undergraduate and graduate
21 school was actually programming computers at Motorola, it
22 was some of the earliest cellular phones that I worked on.

23 Q. Back to Duff & Phelps for just a moment.

24 What are your responsibilities with that firm?

25 A. So I lead our Houston office. We've got about 60 or 70

1 people in that office. I lead our intellectual property
2 advisory services practice. I also serve on something
3 called the leadership forum, which is the top group of
4 managing directors in our firm.

5 Q. In addition to your degrees that you received in
6 college, do you have any other professional certifications?

7 A. I do. So those are the two things at the bottom of this
8 page. I am an accredited senior appraiser, and that's a
9 designation that's about valuation. And mine is valuation
10 of intellectual property rights. That's my focus.

11 And then I am a Certified Licensing Professional,
12 that's a designation that is awarded by a group called the
13 Licensing Executive Society.

14 Q. What does it take to become an accredited senior
15 appraiser?

16 A. That actually takes quite a bit of time. It's called
17 the gold standard for valuation. You have to show 10,000
18 hours of experience valuing intellectual property rights.
19 I had to pass a series of examinations. I have to -- I have
20 my work product reviewed by my peers, and I have to meet
21 some continuing educational goals every year.

22 Q. You also mentioned that you're a Certified Licensing
23 Professional.

24 How did that come about?

25 A. So that's a designation that's intended to recognize

1 people who have expertise in licensing and commercialization
2 of intellectual property rights. And I got that from my
3 experience in licensing both earlier in my career when
4 I worked for a company that we -- we made specialized power
5 plants that had technology and computerized technology.

6 My work earlier when I programmed computers
7 involved some licensing. And then as I've been a
8 consultant, I've done the things that I spoke about. And
9 the Certified Licensing Professional is intended to
10 recognize those skills.

11 Q. Have you written or been published in the area of
12 intellectual property?

13 A. I have. I've had articles published in peer-reviewed
14 journals. I have a textbook chapter that's -- I think it's
15 in its third edition now. And from time to time I'm asked
16 to give talks in front of various audiences, business
17 people, the Bar, lawyers have asked me to speak. I gave a
18 presentation a couple of weeks ago.

19 Q. Switching gears for a moment, have you actually
20 negotiated patent licenses during your career?

21 A. I have. So I mentioned a moment ago that I worked for a
22 company that made these specialized power plants. And when
23 I was there, I led our investment arm as chief financial
24 officer. And I also worked in Europe where I led another
25 technology center, and that involved a lot of technology

1 licensing and gave me an opportunity to negotiate a variety
2 of contracts, including licenses. And then as a consultant,
3 my role is more advisory, but I get involved in those types
4 of negotiations, too.

5 MR. GILLAM: Your Honor, at this time, we would
6 offer Chris Bakewell as an expert in intellectual property
7 valuation in patent damages.

8 THE COURT: Is there objection?

9 MR. GILLILAND: No objection, Your Honor.

10 THE COURT: All right. The Court will recognize
11 this expert as -- excuse me, this witness as an expert in
12 the designated fields.

13 Continue, counsel.

14 MR. GILLAM: You can take down the slide, please.

15 Q. (By Mr. Gillam) Mr. Bakewell, now focusing on the work
16 that you did in this case, what -- what were you asked to
17 do? What was the scope of your work?

18 A. So I was asked to do a couple of things. I was asked to
19 review the work of Mr. Lasinski, who we heard from --
20 I guess it was yesterday morning -- and Ms. O'Neil, as well,
21 to the extent that Mr. Lasinski relied upon her work. And
22 then I was asked to form my own independent opinions
23 regarding a reasonable royalty should the jury get to that
24 question.

25 Q. What information did you review as a part of the work

1 that you did in this case?

2 A. So I reviewed everything that Ms. O'Neil and
3 Mr. Lasinski reviewed. And I also conducted my own
4 research, my own independent research. We've seen many of
5 those types of materials in court today.

6 There's been -- or over the last few days,
7 deposition transcripts, we saw interrogatories, so there's
8 legal documents. And then I did my own research and looked
9 at financial documents and those types of things.

10 Q. Did you also interview anybody in connection with this
11 case?

12 A. I did. I interviewed Mr. Foote, and I interviewed
13 Dr. Crovella, the technical expert that we heard from
14 yesterday.

15 Q. Did you prepare a slide that summarizes your opinions in
16 this case at a high level?

17 A. Yes.

18 MR. GILLAM: Pull up the next slide, please,
19 Mr. Simmons? Thank you.

20 Q. (By Mr. Gillam) What are we looking at here,
21 Mr. Bakewell?

22 A. So this slide summarizes my opinions. I mentioned a
23 couple times already that I have to assume that there's
24 liability. So that means I have to assume that the
25 patent -- Claim 14 that's asserted here is not invalid.

1 So as the first arrow shows, if it's found -- if
2 the ladies and gentlemen of the jury find that patent to be
3 invalid or that claim, then there are no damages. You don't
4 get to that question.

5 And if -- I have to assume that the patent is
6 infringed, even though that might not be true, the ladies
7 and gentlemen of the jury might find that the patent is not
8 infringed.

9 In that case, you don't get to damages. You don't
10 have to worry about the things that I'm talking about, the
11 testimony that I'm talking about.

12 But if you set those things aside, which -- which
13 is called assuming liability, which is what I have to do, my
14 opinion is that a reasonable royalty is no more than
15 \$300,000.00, and that's a lump-sum royalty. It's based upon
16 real-world evidence that we'll talk about. I've prepared
17 some additional slides.

18 Q. Now, by making an assumption of -- if the patent is
19 valid and the patent is infringed, is that only for the
20 purpose of -- of going through this analysis that you have
21 to do?

22 A. It's just for going through this analysis. I have to
23 make that assumption, so we sort of set aside the issue of
24 liability. That's up to you all and the jury. And if you
25 do get to the question of damages, then I think there's some

1 additional information you should consider in addition to
2 what Mr. Lasinski had to say and Ms. O'Neil.

3 Q. By making this analysis, you're not suggesting to the
4 jury that -- that Great West owes any damages, are you, sir?

5 A. Not at all. I think that Great West actually feels very
6 strongly that it doesn't owe any damages.

7 Q. Then why are we even talking about damages? Why did we
8 bring you in this case?

9 A. Well, Great West has the right, right? Mr. Lasinski and
10 Ms. O'Neil testified, and you were able to cross-examine
11 them and ask them questions, but I think also Great West has
12 the right to provide additional evidence through a witness
13 and also to have somebody else take a fresh look and review
14 the work that Mr. Lasinski and Ms. O'Neil conducted and
15 identify maybe additional evidence that they didn't that the
16 jury might want to consider, should they get to the question
17 of damages.

18 MR. GILLAM: Let's take this slide down, please.

19 Q. (By Mr. Gillam) We heard Mr. Lasinski yesterday talk
20 about the concept of a hypothetical negotiation.

21 Did you use this framework, as well, in your
22 analysis?

23 A. Yes, I did.

24 Q. Can you explain to us what a hypothetical negotiation is
25 in the context of -- of analyzing patent damages, and

1 what -- number one, what it is and why you use it?

2 A. Sure. So -- I can. The idea with this hypothetical
3 negotiation is that you go back in time to whatever the
4 appropriate time is that if you assume that there's
5 liability, you have to value -- and I'll say this thing,
6 whatever it is, because this thing can -- in patent damages,
7 it's a patent and it's a reasonable royalty, but the same
8 principle of this hypothetical negotiation exists in other
9 areas.

10 Like if there's a dispute over real estate or over
11 the selling price of a car or a home, you have to go back
12 and figure out what that was worth at a point in time
13 earlier.

14 And there's tools you can use to figure that out,
15 and one of them is you -- you try to figure out who was
16 there and then what the real-world transaction prices were
17 that might -- the parties might consider back -- sort of
18 back in the day whenever the -- the issue was.

19 Q. And of these statements, IV's counsel talked about a
20 patent being like getting rich, striking oil on property.

21 Do you agree with that particular analogy?

22 A. No. There's some problems with that analogy.

23 Q. What's wrong with that analogy?

24 A. Well, it's incomplete. Intellectual property rights,
25 patents, we've heard about this one claim of this one

1 patent. It's like metes and bounds of property. And you
2 have to figure out if you have property and you own it what
3 exactly it is you own. And it's multidimensional. You have
4 to figure out kind of where the fence boundaries are, where
5 the hypothetical lines are on your property, but you also
6 have to know what you own going down, if you own the mineral
7 rights or not.

8 And if there's -- if there's oil under your
9 property and you don't have the -- the mineral rights, well,
10 you're not entitled to any value from that oil. That's just
11 the way that it is. You have to look specifically what it
12 is that you own, and the value that you have is limited to
13 that. And so there's -- there's flaws in that analogy.
14 It's incomplete.

15 Q. Now, assuming that -- well, taking this concept of the
16 hypothetical negotiation, who would have been the parties --
17 if they had gotten back together in time and negotiated a
18 deal, who would have been the parties at the hypothetical
19 negotiation?

20 A. So we've heard these two names, Botalini Tera, which is
21 a special company within -- excuse me -- within the
22 Intellectual Ventures ownership structure. So they're -- on
23 one hand is the licensor, this hypothetical licensor. And
24 then the hypothetical licensee, on the other hand, is Great
25 West.

1 Q. And so what would have happened at the hypothetical
2 negotiation?

3 A. Well, they would have negotiated a royalty based upon
4 whatever it is, the metes and bounds or the claim of the
5 specific patent right in this case, a reasonable royalty for
6 that specifically.

7 We have to go back in time and imagine that before
8 there -- any infringement of that claim occurred,
9 hypothetically, right, this is hypothetical, what they would
10 have agreed to as a reasonable amount of a royalty.

11 MR. GILLAM: Pull up the next slide, please,
12 Mr. Simmons?

13 Q. (By Mr. Gillam) Now, you heard Mr. Lasinski testify
14 yesterday, correct?

15 A. Yes.

16 Q. Is there anything that you agree with Mr. Lasinski on?

17 A. Well, we both have to make this assumption. It says
18 must assume validity and infringement, and we've talked
19 about that several times now. So that applies to
20 Mr. Lasinski, as well as to me. Otherwise, you don't get to
21 the question of damages. It's actually not even zero, it's
22 a null value.

23 This idea of hypothetical negotiation we just spoke
24 about, we -- Mr. Lasinski and I used that same valuation
25 framework, and we considered this case, Georgia-Pacific.

1 There's been other cases and other developments since then.
2 That case is like 50 years old. But the hypothetical
3 negotiation was discussed in that case.

4 And then we talked about the parties to the
5 hypothetical negotiation just a moment ago, that those are
6 Botalini Tera, that's that special Intellectual Ventures
7 subsidiary, as -- and Great West as the hypothetical
8 licensee.

9 Q. In addition to Mr. Lasinski, were you here when
10 Ms. O'Neil testified on Friday?

11 A. I was, yes.

12 Q. Did the analysis of Mr. O'Neil [sic] and the analysis --
13 I'm sorry, Ms. O'Neil and the analysis of Mr. Lasinski have
14 anything in common?

15 A. Well, they fit together. Mr. Lasinski said that he used
16 Ms. O'Neil as a reasonableness check -- her work as a
17 reasonableness check for his conclusions.

18 Q. Taking the two analyses that they did together, did you
19 see any problems as a part of the analysis that they did?

20 A. There were a lot of problems, yes, sir.

21 Q. Can you describe those to the jury, please?

22 A. Well, their analysis wasn't specific to the claims of
23 the '177 patent that's at issue here. They valued something
24 broader. They valued -- or tried to value, and there's
25 issues with even what they tried to do -- a portal that

1 Great West used.

2 And -- and the claim of the patent in this case
3 isn't the entirety of a portal. It's a very specific thing
4 that we heard people discuss or we heard read -- I call it a
5 stipulation. It might have another word legally.

6 And then there's other issues in terms of not
7 considering some evidence. There's some things that I have
8 on slides that I think the ladies and gentlemen of the jury
9 should consider that neither Ms. O'Neil nor Mr. Lasinski
10 discussed.

11 Q. You said they -- they viewed it too broadly or used the
12 term "broad" or something along those lines?

13 A. Correct.

14 Q. Can you tell us what you're talking about there?

15 MR. GILLAM: And could you please, Mr. Simmons, put
16 up the next slide, please?

17 Q. (By Mr. Gillam) What -- what happens -- or what are you
18 talking about when you're talking about they're too broad?
19 Describe that to the jury, please.

20 A. Sure. So Mr. Lasinski discussed how he started out
21 somewhere -- he started out somewhere pretty large actually.
22 He included a whole bunch of transactions, and he also
23 included a value that was attributable to an entire portal.
24 And he talked about this word "apportionment."

25 So he started somewhere really big, and then he

1 tried to work his way down. He didn't work his way down far
2 enough, and there's some issues.

3 But there's problems when you try to use that type
4 of methodology when you value patent rights when you try to
5 start somewhere broad and then apportion down.

6 And I have an analogy here on this slide. It's
7 like if you're going to value a house, for example, like on
8 Fannin Street in Tyler. You've got one house and you say,
9 hey, I want to know how much that house is worth.

10 Well, one way, I guess, you could do it but nobody
11 would do it because it's not reasonable, is you'd say, well,
12 let's -- let me look at all of Tyler, the greater Tyler
13 area, and look at the all the tax revenues that have been
14 collected and all the business activities. And I'll start
15 to subtracting things out. And I'll just do that until I
16 get down to whatever it is that I'm trying to value. I
17 mean, I guess you could do that, right, conceptually, but
18 you have to make a lot of assumptions, and you're probably
19 going to make a lot of mistakes, and you're going to get a
20 value that is not accurate.

21 The way to do it, I would suggest, is you do the
22 same thing in real estate as you do -- at least at a high
23 level in valuing intellectual property rights -- is go right
24 to that particular house and see what it had been bought and
25 sold for or maybe a house down the street or around the

1 corner or something like that and focus in on something
2 specific.

3 When you start really big and try to work your way
4 down, called apportionment, that -- especially when you
5 start so far away from what the patent covers, that just
6 introduces the possibility for error, and that's a mistake
7 that Mr. Lasinski and Ms. O'Neil committed.

8 MR. GILLAM: Next slide, please, Mr. Simmons?
9 Thank you.

10 Q. (By Mr. Gillam) We have a slide here entitled Issues
11 with IV's Demand.

12 By "demand," you're talking about -- well, what are
13 you talking about as far as the demand?

14 A. That's the royalty that Mr. Lasinski submitted
15 yesterday.

16 Q. The \$20 million?

17 A. \$20.3 million.

18 Q. Is starting too broad, as you've just talked about, one
19 of the reasons that you believe that this demand is -- is
20 not reasonable in this case?

21 A. It is.

22 Q. Explain the first bullet point here and what it leads to
23 when you don't do it the correct way?

24 A. Well, you lead to something -- you lead to a conclusion
25 that is overstated.

1 And Mr. Lasinski had -- like -- he showed a few
2 spreadsheets. And one of them showed his calculations where
3 he had a number of transactions, and then he multiplied it
4 by that rate. And then he did a couple of other things. He
5 did a present value calculation, and he subtracted out some
6 cost.

7 I want to focus on that, the top part of his
8 calculation. There, he applied -- he tried to figure out
9 what a rate was and a base. You asked him about that on
10 cross-examination. That's really where his calculation
11 starts and where the math -- the big numbers really are.
12 And there's issues with both the rate and the base.

13 And then as I mentioned a moment ago, and that's
14 the second X on the bottom, both Mr. Lasinski and Ms. O'Neil
15 disregarded some real-world evidence.

16 MR. GILLAM: Next slide, please.

17 Q. (By Mr. Gillam) So you remember my discussion that
18 I had with Mr. Lasinski about base and rate and how -- could
19 you tell us about how those work together in a case or how
20 they're supposed to work together in a case like this?

21 A. So the idea -- this is called a running royalty. And
22 the idea is you try to measure activity by multiplying a
23 base times the rate -- or I put it the other way here, a
24 rate times a base. And there's issues with both of those.
25 You multiply those together, you get to -- this is at least

1 a starting point in the demand.

2 Again, Mr. Lasinski did a couple of other things
3 after this. But if you start too broad, you're not going to
4 get down to what the value of a patent rate is supposed to
5 be.

6 Q. So with respect to the rate and with respect to the
7 base, were there problems that you found with what
8 Mr. Lasinski did and/or with what Ms. O'Neil did that
9 created a problem with their conclusions in this case?

10 A. Yes, there were problems with both.

11 Q. First, let's talk about the rate, and regarding the rate
12 found by Mr. Lasinski, are there issues with the rate that
13 he found?

14 A. Yes.

15 Q. And we heard Ms. O'Neil testify -- testify about it last
16 week.

17 What problems do you see that Mr. Lasinski came up
18 with and/or Ms. O'Neil came up with, with respect to the
19 rate.

20 A. Well, for the rate, they looked at activities that
21 related to an entire portal and not specifically what the
22 claims related to within the accused portal.

23 They also didn't really conduct any analysis that's
24 specific to Great West. And if they didn't do anything
25 specific to Great West, they couldn't have measured values

1 that are attributable to the accused activities.

2 I mean, they talked about a call center -- or call
3 center. Great West doesn't have a call center. They talked
4 about a dollar per-unit adds up to \$20 million.

5 They didn't talk about how many people that would
6 take or anything like that. It was just purely theoretical,
7 and it was too broad.

8 MR. GILLAM: Can you pull up the next slide,
9 please, sir?

10 Q. (By Mr. Gillam) This particular slide that we have
11 here, does this deal with the -- the issue of rate that
12 you're talking about now?

13 A. Yes.

14 Q. Okay. Does this slide show some of the problems that
15 Mr. Lasinski had and/or Ms. O'Neil had in the analysis that
16 they did?

17 A. Yes, well, they both had it. And you asked Ms. O'Neil
18 some questions, and this summarizes some of the answers.

19 On the left here is a slide that came directly from
20 Ms. O'Neil's presentation. And then on the right are issues
21 that I think were identified during her testimony.

22 Q. Okay. You've got a second bullet point there that says
23 performed incomplete analysis.

24 What problems did you see with what she did?

25 A. Well, to begin with, I'll go to the left of that slide

1 that Ms. O'Neil had, she described the benefits of web
2 portfolio portals in general. Not the benefits of this
3 particular claim of the '177. And she thought that it was
4 reasonable and thought that Mr. Lasinski's analysis was
5 reasonable.

6 Well, it's not if you're not valuing the claims of
7 this patent. It goes back to the analogy I used a moment
8 ago about if you start too far away when you're trying to
9 value a property here in Tyler, you're going to get a
10 conclusion that's too high.

11 And then on the bottom X where it says performed
12 incomplete analysis, Ms. O'Neil said that she didn't speak
13 with anyone at IV, so nobody at IV or Botalini Tera. She
14 didn't speak with Dr. Smith, the technical expert, the
15 person who would be able to tell her what the claims of the
16 patent covered specifically. She didn't -- and Mr. Lasinski
17 said that he didn't look at the portal. And they didn't use
18 information that was specific to Great West either. So
19 there's -- those are issues.

20 Q. So did Mr. Lasinski's analysis suffer from many of the
21 same problems that we look at here on the slide related to
22 Ms. O'Neil?

23 A. It did. Ms. O'Neil took this broad view, and she said
24 that what Mr. Lasinski did was reasonable. So she did
25 something that was too broad and unreasonable, and she's

1 actually saying that what Mr. Lasinski did is unreasonable
2 if she said it's okay.

3 MR. GILLAM: Next slide, please.

4 Q. (By Mr. Gillam) So what does this slide summarize for
5 us with respect to the rate?

6 A. This is just summarizing that they didn't value Claim 14
7 and that their analysis was overstated, so the value there
8 is too high.

9 Q. Moving to the base, regarding the base that was found by
10 Mr. Lasinski, what are the main issues here?

11 MR. GILLAM: And can we go to the next slide,
12 please?

13 A. Yes, so this was a slide that Mr. Lasinski used, too.
14 I took it straight from his presentation. And you spent
15 some time with him asking him questions about that
16 yesterday.

17 He had, I believe, about 11 million transactions,
18 and you went through, you brought up the spreadsheet that
19 Great West produced that had those transactions, and you
20 marked things in red on the screen. And Mr. Lasinski said
21 those things are not part of the stipulation, so they
22 shouldn't have been included.

23 And what he said was that if you take those items
24 out that were stricken in red, that that would reduce his
25 number by something like 75 percent. So there his royalty

1 base, the number of units that he counted are too high, and
2 his analysis is overstated there, too.

3 Q. (By Mr. Gillam) Now, did you -- did you -- in addition
4 to watching Mr. Lasinski testify yesterday, did you look at
5 other things and talk with other people to confirm that
6 his -- that his conclusions were inflated?

7 A. Yes. I talked to Dr. Crovella, and I listened to the
8 testimony of Great West employees. I interviewed Mr. Foote,
9 as I mentioned a moment ago, and listened here at trial.

10 Q. If you take the problems with the rate and you take the
11 problems with the base, what does this mean in general?

12 A. Well, it's simple -- simple multiplication, right? So
13 if both numbers are too high, the result is going to be too
14 high. You can't -- it's not like you can multiply two
15 things that are wrong together and get something that's
16 right. Two wrongs don't make a right.

17 And so if you go to the next slide, the conclusion
18 is going to be that you're going to get a value that's
19 overstated.

20 Q. Is there a better way and a more direct way,
21 Mr. Bakewell, to value the '177 patent in this case?

22 A. There is. You can look -- we have transactions that
23 neither Mr. Lasinski nor Ms. O'Neil talked about, and we'll
24 talk about those now.

25 Q. So did Mr. Lasinski disregard that evidence?

1 A. He did.

2 Q. Did he present any -- any evidence to this jury about
3 what you're going to talk to us about?

4 A. He did not present this information.

5 Q. Now, did Mr. Lasinski and Ms. O'Neil have this
6 real-world evidence available to them?

7 A. Yes.

8 Q. What type of information in general did Ms. Lasinski --
9 or Mr. Lasinski and Ms. O'Neil disregard in this case?

10 A. There's -- this patent has been bought and sold several
11 times, and Intellectual Ventures has some records where they
12 recorded what the value is of the patent.

13 Q. What about the issues of what's been described -- and
14 we'll talk in more detail about it -- as non-infringing
15 alternatives?

16 A. That's right. Another way to look at the value of a
17 patent is non-infringing alternatives. And we can talk
18 about that, too.

19 MR. GILLAM: Next slide, please.

20 Q. (By Mr. Gillam) And what is this, just a summary slide
21 of their disregarding the rules of evidence?

22 A. That's right. It's also good news because we're moving
23 on. We've gone through these two issues, and now, we'll
24 focus on other evidence.

25 Q. In discussing the evidence that you looked at,

1 Mr. Bakewell, that IV disregarded in this case, is there a
2 framework that you use for your analysis?

3 A. There is. So the way that -- in my profession,
4 valuation of intellectual property rights is like valuation
5 of real estate or valuation of machinery or equipment. We
6 all use the same economic framework, and it breaks evidence
7 down into three potential categories.

8 One is called the income approach. That's the --
9 the chart that's there on the left.

10 The next is called the cost approach. And in
11 intellectual property we talk about non-infringing
12 alternatives.

13 And then on the right, those houses, that's the
14 market approach, and that's by looking at comparable
15 transactions -- what a patent might have been bought and
16 sold for.

17 Q. Just at a high level, what are you talking about when
18 you say the income approach?

19 A. So the income approach is a tool where you try to figure
20 out if the patent generates revenues or it generates profit
21 in some way. And that's what Mr. Lasinski tried to do, but
22 as we've talked about now for some time, he arrived at a
23 conclusion that is much too high. Even by his own
24 testimony, it's something like -- he could take a reduction
25 of about 75 percent to his numbers before even looking at

1 the \$2.75. That was just from the base.

2 Q. What's the cost approach generally about?

3 A. That's about non-infringing alternatives. That's trying
4 to go back in time. Remember, we talked about the
5 hypothetical negotiation? The idea is to go back time in
6 this hypothetical negotiation and figure out if Great West
7 could have said, hey, maybe we'll just do something else,
8 and we'll accomplish the same thing another way, or we'll
9 decide not to use your technology at all, and just take it
10 out.

11 We have to -- it's hypothetical, too, so we have to
12 go back in time. That's why I've used this street sign.
13 You sort of have to go back to the bottom before you made a
14 decision to go one way, say, okay, we're going to rewind and
15 maybe we could have gone another way. And then you try to
16 figure out, well, what would have been the impact going this
17 other way.

18 Q. And, generally, at a high level, again, what's the
19 market approach?

20 A. The market approach is by looking at transactions. Like
21 when you buy and sell a house, if you want to know -- at
22 least I would want to know, and I know that my colleagues
23 who do real estate appraisals would want to know what that
24 house had been bought and sold for in the past.

25 Q. Do you have another slide that shows the values

1 associated with these three approaches?

2 A. I do.

3 MR. GILLAM: Next slide, please.

4 Q. (By Mr. Gillam) And we have a lot of information on
5 this particular slide. I want to walk you through it
6 piece-by-piece.

7 Can you -- can you basically tell us what the data
8 points are here? And then we'll describe them in more
9 detail.

10 A. Sure. So the income approach is what Mr. Lasinski and
11 Ms. O'Neil tried to do. That's on the left. There's issues
12 there, and we'll recap those in a moment.

13 The cost approach is non-infringing alternatives,
14 and there's different ways to look at values there. And
15 we'll talk about that in a moment. Those numbers are less
16 than \$100,000.00, as that bar shows.

17 And then there's two transactions -- there's
18 actually three, the \$150,000.00 is part of the two
19 transactions that occurred. That's the sale from the
20 inventor to a company called Mount Hamilton Partners.
21 That's a broker.

22 And then that company Mount Hamilton Partners sold
23 the patent -- the '177 patent, along with a couple of other
24 patent rights, for \$300,000.00. And I'll explain where the
25 \$100,000.00 comes from.

1 And then in IV's own records, they have something
2 called a runway system where they keep information. They
3 have \$100,000.00 assigned to the '177 patent.

4 MR. GILLAM: Next slide, please.

5 Q. (By Mr. Gillam) Dealing with the income approach, and I
6 know we've discussed this at some -- at some length already,
7 but what are you showing us on this particular slide with
8 respect to the income approach?

9 A. Well, we know that the numbers that Mr. Lasinski arrived
10 at are too high. And if you make just that one reduction to
11 the base before you even address the rate, his number is
12 going to fall by 75 percent.

13 And there's no revenues, we also know, that are
14 attributable to this patent. And when we look at
15 non-infringing alternatives in a moment, that will also show
16 why there's limited income that's attributable to the
17 specific claim of this patent that's been asserted in this
18 case.

19 MR. GILLAM: Next slide, please.

20 Q. (By Mr. Gillam) This is the cost approach, correct?

21 A. Or non-infringing alternatives. They mean the same
22 thing.

23 Q. All right. We heard Dr. Crovella being asked about
24 non-infringing alternatives yesterday and why they're
25 relevant.

1 I'd like you to explain to the jury, and take just
2 a moment to do this, to talk about what non-infringing
3 alternatives are --

4 THE COURT: Just a minute.

5 Mr. Gilliland?

6 MR. GILLILAND: Yeah, I was waiting for the
7 question to finish, but I object to the question to the
8 extent that it mischaracterizes the testimony. Dr. Crovella
9 never testified as to a non-infringing alternative.

10 THE COURT: Well, everyone in the courtroom has
11 heard his testimony, and that's certainly something you can
12 take up under cross at this point. But at this point, I'm
13 not going to prevent the question from being asked and
14 answered.

15 So I'll overrule your objection.

16 MR. GILLILAND: Thank you, Your Honor.

17 Q. (By Mr. Gillam) Would you take just a moment,
18 Mr. Bakewell, and explain to the jury what non-infringing
19 alternatives are and why they're important in a case like
20 this?

21 A. So non-infringing alternatives are a way to look at --
22 remember, we talked about the metes and bounds of property
23 and how it can be three-dimensional, whether you have the
24 mineral rights and going down, like, to the creek and
25 turning left and looking at where the property lines are,

1 the same thing applies to a patent, same idea. You have to
2 figure out what the boundaries are. And one way you can do
3 that is by considering non-infringing alternatives.

4 So the way that I think about it is, well, what's
5 inside the boundaries of the property and what's outside?
6 What does the patent cover and what doesn't it? And the way
7 you do that in the context of a patent is, hey, what could
8 we have done instead and then not have violated this patent
9 or infringed this patent right.

10 That's what these points say. It's like, hey,
11 let's look at the scope and value. You do it when you go
12 back in time. What options would you have? I've described
13 all this. And then what would the cost be associated with
14 that? And that's a way of more specifically focusing in on
15 the value of the patent right.

16 Q. Does this issue relate to liability in this case at all?

17 A. And we heard -- Dr. Crovella was asked about that, so an
18 expert like him who thinks that the patent is not infringed
19 and is invalid, I have to tell him, like, hey, you have to
20 make an assumption, Dr. Crovella, that's totally different
21 than that.

22 We have to operate in a different world where we
23 assume that Dr. Smith is right. As much as you might
24 disagree with him, can you make that assumption? And he
25 talked about that yesterday. It's the hypothetical, right?

1 And so that's the idea.

2 Q. On the issue of damages, when you considered this cost
3 approach and non-infringing alternatives, what did you find,
4 sir?

5 A. So I found that there were options. I learned from
6 Mr. Foote and Dr. Crovella that there were at least a couple
7 of options that Great West could have done if it had known
8 about this patent instead, and that they didn't -- wouldn't
9 have cost very much to do.

10 Q. Okay. Talk to us about that, please.

11 A. So there were -- there were a couple, and Mr. Lasinski
12 and I actually agree upon one thing. We -- he was able to
13 estimate what the costs were -- what he called the
14 incremental cost of implementing this specific part of the
15 IBM WebSphere at Great West.

16 And that cost -- he estimated it costs somewhere
17 between 160 and \$200,000.00, incrementally, so the whole
18 thing to implement it, cost less -- cost Great West about
19 200,000. So we're talking about making some changes to that
20 implementation, doing part of it a different way.

21 And there were a couple things that Dr. Crovella
22 said. One was to use a different sign-in, and another was
23 we heard about yesterday to do some different things with
24 how data is treated.

25 Q. Did you do anything else to determine if Great West

1 had non-infringing alternatives?

2 A. Well, I -- I asked Mr. Foote if those could have been
3 done, and I asked him what the cost would be. And he told
4 me for both of those it would take a couple hundred hours or
5 so, and the labor rates were about \$60.00 per hour. So
6 we're talking about a fraction of that \$160,000.00,
7 something more like \$10,000.00 or so, just for that specific
8 change or those specific types of changes.

9 MR. GILLAM: Next slide, please, sir.

10 Q. (By Mr. Gillam) So with respect to this cost approach
11 or the non-infringing alternatives, what are you showing us
12 on this particular slide then?

13 A. So this summarizes it. It's like, hey, this is the
14 incremental implementation cost of WebSphere. It's --
15 I used one of the numbers that Mr. Lasinski did, 163,000.

16 Let's look at the piece that relates to this
17 accused functionality. To do that a different way would
18 cost less than \$163,000.00, far less. And there's a couple
19 of options that -- at least that Dr. Crovella provided and
20 Mr. Foote told me the cost associated with those. And he
21 told me the impact wouldn't be significant.

22 Q. So if a company has an ability to implement a
23 non-infringing alternative like this, why don't companies
24 just do it?

25 A. So a couple of things. First of all, this exercise is

1 hypothetical, and the idea is to go back and perform a
2 valuation.

3 So if Great West wouldn't have had to do this if it
4 didn't feel like it -- or know that there was a patent out
5 there or didn't feel like it infringed. And then Great West
6 has the ability to come to court and say, you know, we don't
7 think that we infringe the patent, basically to stand up for
8 its rights and say, well, we don't infringe, and your patent
9 is not valid.

10 And so you can't say, hey, why don't you just do
11 it? It will be a piece of cake. Sometimes people have to
12 do things that are right and stand up for what they believe
13 in. And I think that's the case here.

14 MR. GILLAM: Next slide, please.

15 Q. (By Mr. Gillam) We've discussed the income approach,
16 and we've discussed the cost approach or non-infringing
17 alternative.

18 What's the next step that you want to talk about?

19 A. These are the transactions that I referred to several
20 times now.

21 Q. Is this the market approach that you described a few
22 moments ago?

23 A. Correct. It's indicated there with the houses on the
24 bottom in the blue colors.

25 Q. So do we have actual -- or not we, but were there --

1 evidence of actual transactions then involving the
2 '177 patent in this case?

3 A. Yes, this patent has been bought and sold.

4 Q. In terms of their amounts, are they anything like what
5 Mr. Lasinski came up with in this case?

6 A. Nothing at all. There -- the numbers are more like
7 \$300,000.00 or less.

8 Q. We'll come back to this.

9 MR. GILLAM: But let's go to the next slide,
10 please.

11 Q. (By Mr. Gillam) Before we get into those transactions,
12 would it be helpful to see kind of the timeline of events
13 and where things fit in?

14 A. I think it would be helpful. I prepared this slide
15 sitting here in court, and it seemed to me that we hadn't
16 gone through these dates, or the jury hadn't heard these
17 dates, and so I thought it would be helpful to provide some
18 context for some of these values to provide them. And I had
19 to put my glasses on. Hopefully, this isn't too small.
20 I tried to make it as readable as I could.

21 Q. All right. So, generally, starting back in June 2004,
22 walk the jury through the dates that are applicable to your
23 damage analysis here, and then we'll fill in these other
24 things.

25 A. So we heard briefly, that's when the application to the

1 '177 patent, and the '177 is a continuation of a patent
2 called the '010 patent, that's the parent patent, and that
3 was filed in 2000.

4 The patent rights go -- they last for 20 years, so
5 if you go from 2000 to 20 years from then you would go to
6 May 2020. That's when the '177 patent expires. That's the
7 bookends of this diagram.

8 The '177 patent actually issued in April of 2009.
9 I show that in the middle.

10 Mr. Lasinski talked about a hypothetical
11 negotiation date in July of 2013, and then there's a gap,
12 and August of 2014 is when Great West launched the agent
13 portal. And -- and that's when it's accused of infringing
14 for the first time.

15 MR. GILLAM: Let's have the next slide, please.

16 Q. (By Mr. Gillam) Now, on this particular slide, have you
17 added data points regarding a couple of transactions, as
18 well as one other bit of information for us?

19 A. I have. So let's walk through these from left to right.

20 Q. First, let's look at August 2006. Tell us what happened
21 then.

22 A. There's a company called HowZone, which owned the --
23 I wrote '177 app, so it was the application to the
24 '177 patent. The '010 patent, that's the parent patent.
25 And then another application to Mount Hamilton Partners,

1 that's the patent broker I mentioned earlier. They assigned
2 those rights in August 2006 for \$150,000.00.

3 And if the ladies and gentlemen of the jury want to
4 look at that document, I wrote in red sort of like with a
5 stamp, like a meat stamp, the exhibit number. It's
6 GWX-0204.

7 Q. Is there another data point or another transaction that
8 you think is important to look at in September of 2008?

9 A. There is. But if I could back up to August 2006 for one
10 moment?

11 Q. Certainly. I'm sorry.

12 A. I put a star there, and then go down -- if you go down
13 and read what's at the bottom of that star, there's actually
14 two transactions.

15 First, HowZone agreed to sell the patent rights for
16 115,000 plus a contingent payment, like upside. And then
17 they waived it a couple of months later in November to a
18 \$150,000.00 flat fee. So they waived their contingent
19 rights and agreed to take \$150,000.00 as a lump sum.

20 Q. All right. Let's move on to September 2008.

21 What happened in September 2008 that you believe is
22 a transaction applicable to what we should be discussing
23 here?

24 A. So that's when IV's company, Botalini Tera, purchased
25 these three patent assets, the parent to the '177, the

1 '177 when it was still an application, and another patent.
2 That was in September 2008. It was for \$300,000.00. And
3 that document or that transaction is documented in
4 Exhibit GWX-0230.

5 Q. We've added another thing to the timeline here, that's
6 to the right of that, January 2015.

7 What actually happened in January 2015?

8 A. So that's when the complaint was filed in this case.
9 That's -- we heard the word "notice." That's when Great
10 West was put on notice, when they were told that
11 Intellectual Ventures thought that they infringed this
12 patent when they were sued. And that's what Mr. Lasinski's
13 damages start date is, January of 2015.

14 Q. So after this lawsuit was filed in January 2015, did
15 something else happen that you looked at, which is relevant
16 to what we're discussing here?

17 A. So then discovery occurred between the parties, right,
18 they can ask each other for information, and they print
19 things out and send it over.

20 And there was a document that was printed from
21 Intellectual Ventures's records called -- it was called an
22 iRunway -- or a runway sheet. They used that information to
23 explain what they think the values are of the rights that
24 they own and some other details.

25 And in there the '177 patent had issued by then,

1 and they recorded a value of 100,000 for the '177 patent,
2 for the '010 patent, and for the other patent. So the
3 \$300,000.00 was broken up into three pieces, one of which is
4 a \$100,000.00 for this '177 patent, which had issued by
5 then.

6 MR. GILLAM: Let's -- let's skip over a couple of
7 slides if we could. Let's go to the slide that says
8 IV Records, if we could.

9 There we go.

10 Q. (By Mr. Gillam) Is this a particular -- is this a
11 document that you're discussing here, Mr. Bakewell?

12 A. I am. This includes actually the asking price that
13 Mount Hamilton Partners asked for, \$350,000.00. So they
14 asked for \$350,000.00 from Intellectual Ventures.

15 Intellectual Ventures agreed it's the offer price
16 to pay them 300,000, and the deal closed at that. So the
17 deal cost was 300,000, and then the cost per asset in
18 Intellectual Venture's own records was recorded at
19 \$100,000.00.

20 Q. And it's hard to see the date on there, but the date --
21 is it June of -- it's down at the very bottom right-hand
22 corner.

23 There we go.

24 A. That says June 16th, 2015.

25 Q. Which would be after the date this lawsuit is filed?

1 A. Correct.

2 MR. GILLAM: Let's go back to two slides if we
3 could?

4 Q. (By Mr. Gillam) So what do we have on this particular
5 slide? We've added in the various transactions that you
6 found, the 150, the 300,000, and the \$100,000.00 value put
7 on it by IV. And what does this show us in this particular
8 slide, sir?

9 A. Well, this is another way to show that Mr. Lasinski's
10 damages estimate is not reasonable. Just for that period of
11 time, that's his damages window. He says that
12 Great West owes Intellectual Ventures \$20.3 million, and
13 that's just not even relative to all this other evidence
14 that we have, in addition to the issues with his
15 methodology.

16 MR. GILLAM: Go forward, please.

17 Q. (By Mr. Gillam) Oh, let me -- let me -- I did not
18 mention this.

19 MR. GILLAM: If you could go back one slide,
20 please? I actually want to look at the -- the slide that --
21 there it is.

22 Q. (By Mr. Gillam) This \$100,000.00 figure, the
23 IV accounting --

24 A. Yes.

25 Q. -- that we looked at a few moments ago, for purposes of

1 the record, that's GWX-0261; is that correct?

2 A. That is.

3 Q. All right. And we heard Mr. Lasinski talk yesterday,
4 and you discussed it a few moments ago, about these
5 Georgia-Pacific factors.

6 You remember that?

7 A. Yes.

8 Q. And tell us, again, briefly what Georgia -- we know
9 Georgia-Pacific is a paper company. But what does
10 Georgia-Pacific have to do with anything in this case or in
11 the area of patent damages?

12 A. Georgia-Pacific is a -- is a paper company and was
13 involved in a lawsuit 50 years ago. And there were a bunch
14 of cases that came out of that lawsuit. And one of them,
15 the Judge said, hey, the way you should figure out a
16 reasonable royalty is you should use this hypothetical
17 negotiation tool. It's that same tool you use for valuing
18 other assets. And then he listed out 15 factors that he
19 said that you might want to think about in the context of
20 intellectual property and patent damages.

21 Q. So in addition to the work that you've already described
22 in this case, did you consider those same factors, as well?

23 A. I did.

24 Q. Could you explain to us how those are applicable to what
25 you did here, and do we need to discuss them in detail?

1 A. Well, the good news is we've already discussed them.

2 Q. Okay. What factors are applicable as far as the
3 Georgia-Pacific factors in your analysis?

4 A. There's a -- there's a few. And I'll just run through
5 them very quickly.

6 1, Georgia-Pacific Factor 1, relates to
7 transactions involving the patent at issue.

8 Georgia-Pacific Factor 3 relates to what's included
9 in this hypothetical license. Here it's the only the one
10 claim of the '177 patent.

11 Factors 8 and 9, those relate to talking to
12 technical experts and figuring out what the boundaries are
13 of that patent right.

14 And then Factor 13 is something called
15 apportionment, which says, hey, you need to look at
16 specifically what this patent covers and nothing else.

17 Those are the important Georgia-Pacific factors,
18 and I think we've talked about them all.

19 MR. GILLAM: Next slide, please.

20 Q. (By Mr. Gillam) In summary, Mr. Bakewell, how does
21 Intellectual Property's [sic] demand of 20 -- or over
22 \$20 million compare to the real-world evidence that you
23 considered in this case?

24 A. Intellectual Ventures's demand in this case is not
25 reasonable. It's not reasonable in and of itself. And then

1 it's not reasonable relative to the other evidence that we
2 have. That's what this chart shows.

3 I mean, I couldn't even put the scale -- it's --
4 the scale on the left axis goes up to a million dollars.
5 I put an arrow because \$20 million doesn't even fit on this
6 page.

7 Q. Do you have a slide summarizing the appropriate
8 reasonable royalty in this case?

9 A. Yes.

10 MR. GILLAM: Could you go to the next slide,
11 please?

12 A. Well, the evidence that we have says that a reasonable
13 royalty is no more than \$300,000.00, and I think that's a
14 much more reasonable conclusion if the ladies and gentlemen
15 of the jury get to the question of damages at all.

16 Q. And that's based on your analysis of the income
17 approach, cost approach, and these transactions that we
18 discussed; is that right?

19 A. Yes.

20 Q. I want to ask you one last thing. If Claim 14 is found
21 to be invalid, what would the damages be in this case?

22 A. We don't even get to damages, so it's not even zero.
23 It's null.

24 Q. And you're aware that Great West disputes infringement
25 in this case, correct?

1 A. Yes.

2 Q. If the jury finds non-infringement in this case, what
3 are the damages?

4 A. They're the same thing. There's no damages. You don't
5 get to that question.

6 MR. GILLAM: Pass the witness.

7 THE COURT: Cross-examination?

8 MR. GILLILAND: Your Honor, I have some notebooks
9 for cross.

10 May I pass those out?

11 THE COURT: You have leave to distribute your
12 notebooks.

13 CROSS-EXAMINATION

14 BY MR. GILLILAND:

15 Q. Good afternoon, Mr. Bakewell.

16 A. Hi, good afternoon.

17 THE COURT: Good morning, gentlemen.

18 THE WITNESS: Oh, good morning.

19 MR. GILLILAND: Good morning.

20 THE WITNESS: You got me.

21 MR. GILLILAND: I lost track of time.

22 Q. (By Mr. Gilliland) Let's start off -- I want to talk
23 about a few things that you and Mr. Lasinski agree with.

24 First, for the purposes of the hypothetical
25 negotiation, you agree that you have to assume the patent is

1 valid?

2 A. Correct.

3 Q. And for purposes of the hypothetical negotiation, you
4 have to assume that the patent is infringed?

5 A. Correct.

6 Q. And I believe even in some of your calculations, you
7 agreed with Mr. Lasinski for the discount rate of
8 12 percent?

9 A. I don't have an issue with that that I raised today.
10 I think there's issues with that, but I'd set that aside for
11 purposes of today.

12 Q. And you also would agree that Great West does not track
13 the value of the cost savings from its web portal.

14 You would agree with that, wouldn't you?

15 A. Yes.

16 Q. And without information from Great West directly, you
17 would agree that it's appropriate to look for other closely
18 related data to come to a conclusion, wouldn't you agree
19 with that?

20 A. To try, you'd have to do it reasonably.

21 Q. And I believe you also said -- I guess you've -- you've
22 got a certified licensing professional designation?

23 A. Yes.

24 Q. And that's from the Licensing Executive Society?

25 A. Correct.

1 Q. Did you get that while Mr. Lasinski was president of the
2 organization?

3 A. I don't know.

4 Q. Have you ever held any offices within the Licensing
5 Executive Society?

6 A. Not within that organization.

7 Q. I want to talk briefly about one of your slides.

8 MR. GILLILAND: If we could bring up -- I think
9 it's Slide 23?

10 Q. (By Mr. Gilliland) Okay. And this is a slide where
11 you're talking about prior purchases related to the
12 '177 patent family?

13 A. Correct.

14 Q. And in this \$150,000.00 purchase in August of 2006, at
15 that time, the '177 patent was just a patent application,
16 right?

17 A. That's why it says '177 app there.

18 Q. That's an abbreviation for application?

19 A. That's correct.

20 Q. And an application means that it's in the Patent Office,
21 but the patent has not yet been granted, right?

22 A. That's true.

23 Q. And so you don't know yet what the metes and bounds
24 of that deed are even going to be or what that patent are
25 going to be, right?

1 A. You have an idea, but there's more refinement that he
2 could potentially be done.

3 Q. And there's no guarantee that it will actually issue as
4 a patent, is there?

5 A. True.

6 Q. And then this -- this transaction in 2006, that was for
7 a family -- what we call a patent family, right?

8 A. Correct.

9 Q. And that means it included the parent and the two child
10 patent applications, right?

11 A. Yes.

12 Q. And then in 2006 when that family was sold again, it was
13 sold for \$300,000.00, right -- or in 2008, excuse me?

14 A. It wasn't right. I think you meant in 2008.

15 Q. Yeah, I caught myself at the end, that's right.

16 So from August of 2006 to September of 2008, that
17 patent family sold for over twice the amount it sold for in
18 2006?

19 A. True.

20 Q. So it doubled in value in just those two years, right?

21 A. That's true.

22 Q. And at that time in 2008, the '177 patent was still just
23 an application?

24 A. Correct. It was like several months before it issued.

25 Q. Right. But it was still no guarantee that it was going

1 to issue by that date, was there?

2 A. True.

3 Q. It was sort of like the glimmer in the inventor's eye as
4 opposed to an actual deed to an invention?

5 A. That's false.

6 Q. Well --

7 A. That's very false.

8 Q. It wasn't an issued application, was it -- or an issued
9 patent?

10 A. That, I agree with.

11 Q. Okay. And so in just that two short years, that patent
12 family had doubled in value just looking at sales of the
13 family, right?

14 A. The numbers are what they are. They went from 150 to
15 300 in two years.

16 Q. And in the last 11 years, you want to say that it's had
17 no additional value? That's what you're telling this jury
18 is that it should stay at 300, even though 11 years had
19 passed?

20 A. Actually, I told the ladies and gentlemen of the jury
21 something more specific. I said that in this case, we need
22 to look at the metes and bounds or the claim that's been
23 asserted of one piece of that, one piece of those three
24 patents for one potential licensee, and that's a subset of
25 all of that. And so that's what I'm saying is that piece of

1 that transaction is worth less.

2 MR. GILLILAND: I'll object as non-responsive, Your
3 Honor.

4 THE COURT: Overruled.

5 MR. GILLILAND: Now, if we could go to -- well,
6 before we go to this other slide -- you can take that one
7 down.

8 Q. (By Mr. Gilliland) But you -- you started your
9 testimony off by saying that -- something to the effect of
10 Great West did not have to call you as a witness, right?

11 A. I don't know if I said that, but I agree with that.

12 Q. Okay. They didn't have to present you as a witness on
13 damages, did they?

14 A. Correct.

15 Q. But they made the decision to have you come in here and
16 testify on this jury to this much lower number than
17 Mr. Lasinski, right?

18 A. They called me up. I answered the questions, they asked
19 questions.

20 Q. And they could have also -- well, let -- let me start
21 this over.

22 You're not an insurance industry expert, are you?

23 A. True.

24 Q. And they could have called an insurance industry expert
25 to comment on what Ms. O'Neil said, couldn't they?

1 A. Sure.

2 Q. And, in fact, you had actually talked to an insurance
3 industry expert for Great West when you drafted your report,
4 didn't you?

5 A. I did.

6 Q. And did you see that gentleman sitting in the courtroom
7 for a great part of this trial?

8 A. I've seen him.

9 Q. And -- but you realize he's not going to be called to
10 testify, is he?

11 A. Apparently not.

12 Q. And you're also, in addition to not being an insurance
13 industry expert, you're not a technical expert in this case,
14 are you?

15 A. That's true.

16 Q. And so you are not rendering any opinions on
17 infringement, are you?

18 A. Correct.

19 Q. And you're not rendering any opinions on validity
20 either, are you?

21 A. That's true. Those are assumptions that I make.

22 Q. Okay. And you're not testifying to this jury -- well,
23 rendering any opinions to this jury as to what is a
24 non-infringing alternative?

25 A. Correct. I'm making assumptions based upon what I was

1 told by Dr. Crovella and Mr. Foote.

2 Q. And you're having to rely on Dr. Crovella and
3 Mr. Foote's testimony for any of those kind of technical
4 non-infringement issues?

5 A. And Dr. Smith, too.

6 Q. And Dr. Smith, too.

7 But you're not rendering those opinions for this
8 jury, right?

9 A. I'm making assumptions based upon what those three
10 gentlemen have said, and then I'm incorporating those into
11 my analysis.

12 Q. But you're not rendering or giving this jury a
13 non-infringement opinion yourself, are you?

14 A. Correct.

15 MR. GILLILAND: And let's go to --

16 Q. (By Mr. Gilliland) So you had this slide up earlier
17 where you had issues with Ms. O'Neil.

18 You remember this slide?

19 A. I don't have issues with her. I just think that her
20 analysis was off.

21 Q. Okay.

22 A. I don't have any issues with her at all.

23 Q. But one of the criticisms you had had was that she did
24 not speak with Dr. Smith.

25 Do you see that?

1 A. Correct.

2 Q. And that's a criticism of Ms. O'Neil, right?

3 A. In part. Also, Mr. Las -- she said that Mr. Lasinski's
4 conclusion was reasonable, even though she hadn't done that,
5 and she focused on a portal. And if I was in Mr. Lasinski's
6 shoes, I would have said, whoa, I'm not supposed to be
7 valuing a portal here, and he should have gone back and
8 rethought it.

9 MR. GILLILAND: I'll object as non-responsive.

10 THE COURT: I'll sustain that.

11 Mr. Bakewell, you need to limit your answers to the
12 questions asked.

13 THE WITNESS: Yes.

14 THE COURT: You're well aware that Mr. Gillam will
15 get to follow up with additional questions. So limit your
16 answer to the questions Mr. Gilliland asks, all right?

17 THE WITNESS: Yes, sir, Your Honor.

18 THE COURT: Okay. Let's continue.

19 Q. (By Mr. Gilliland) And -- but you know that
20 Mr. Lasinski did speak to Dr. Smith, don't you?

21 A. He did.

22 Q. And you criticize Ms. O'Neil for not looking at the
23 portal, right?

24 A. Yes, that applies to both of them.

25 Q. Yes. And that applies to you, doesn't it?

1 A. I don't think so.

2 Q. Well, in the materials you considered when you wrote
3 your report, you did not identify the portal as anything
4 that you evaluated, did you?

5 A. That's not correct. That's not correct.

6 Q. So among the facts and data of materials considered on
7 Page 9 of your report, you do not on there anywhere say you
8 looked at the accused portal; isn't that correct?

9 A. That's false. It doesn't include those words, but
10 drawing that conclusion that you're drawing is incorrect.
11 I looked at the portal in detail.

12 Q. So you didn't put the words in your report, but we're
13 supposed to make that assumption based on your testimony
14 today?

15 A. Yes. I read the infringement contentions, and I read
16 Dr. Smith's report, and I also went to the Internet and
17 looked at IBM WebSphere. I discussed WebSphere in detail.
18 This is an implementation of IBM WebSphere. You can look at
19 YouTube videos and see how the functionality works, and so
20 I did look at it.

21 Q. But you did not bother putting that in your report, did
22 you?

23 A. I did put that stuff in my report.

24 Q. Well, if you'll look at page --

25 A. I -- I'm sorry.

1 THE COURT: One at a time, gentlemen.

2 MR. GILLILAND: Sorry, Your Honor.

3 Q. (By Mr. Gilliland) If you'll look at Page 9 and 10 of
4 your report, which is in front of you in that binder?

5 A. Yes.

6 Q. Starting with Section 1.4, the title of which is Facts,
7 Data, and Information Considered.

8 Do you see that on Page 9 and 10?

9 A. I do.

10 Q. And then you list the facts and information considered.
11 And nowhere in that list do you include YouTube videos or
12 online investigation of WebSphere, do you?

13 A. I don't use those words, but I also point to Attachment
14 C which has pages and pages of Bates numbered documents, and
15 I also describe WebSphere in pages in my report.

16 MR. GILLILAND: I'll object as non-responsive, Your
17 Honor.

18 THE COURT: Sustained.

19 The question was are they on those pages, and your
20 answer was that they're not, and then you went on to offer
21 other explanation. You need to limit your answer to the
22 question asked.

23 Q. (By Mr. Gilliland) Now, you also criticized Dr. Smith
24 for not using -- or Ms. O'Neil, excuse me, for not using
25 Great West information.

1 That's what you put, right?

2 A. Yes.

3 Q. But you understand, one, based on the interrogatory
4 responses, Great West did not have information related to
5 the cost savings, right?

6 A. There was an interrogatory response that said that
7 information wasn't captured.

8 Q. But you also know from having sat in here and listened
9 to the testimony that Mr. Lasinski used Great West data on
10 how many times people viewed the portal pages, right?

11 A. Correct.

12 Q. And so he did use that data, data about use, right?

13 A. I discussed that, yes.

14 Q. And you discussed that with Mr. Gillam just a moment
15 ago, didn't you?

16 A. I did.

17 Q. Now, one of the things that you understand that the jury
18 is going to have to decide in this case, if they get to
19 damages, is they have to decide what a reasonable royalty
20 will be, right?

21 A. Correct.

22 Q. And under the law, you understand, as -- as I expect the
23 Court will instruct the jury, that in no event -- excuse me,
24 that the -- that upon a finding for Plaintiff, the Court
25 shall award the Plaintiff damages adequate to compensate for

1 the infringement, but in no event less than a reasonable
2 royalty for use of the invention.

3 Do you understand that that's likely to be the
4 instruction?

5 A. I don't understand -- well, I -- I don't know what the
6 instructions will be, but I think that that's likely.

7 Q. And you're familiar with the statute that lays that out,
8 aren't you?

9 A. Yes.

10 Q. And, in fact, you cited -- you cited to that statute in
11 your report, didn't you?

12 A. Correct.

13 Q. And this -- this -- these transactions between the
14 inventors and Mount Hamilton Partners, those had nothing to
15 do with use, did they?

16 A. I disagree.

17 Q. Well, there wasn't any evidence of use that went into
18 those calculations, was there?

19 A. I disagree with that, too.

20 Q. Well, there was no evidence that Mount Hamilton Partners
21 was using the invention when they sold it to IV, was there?

22 A. Mount Hamilton Partners was a broker, so it wouldn't use
23 it.

24 Q. And there's no evidence that IV acquiring it for use, is
25 there?

1 A. Actually we know that IV didn't intend to use it.

2 Q. But there is evidence that Great West has used the
3 invention, isn't there?

4 A. That, I don't know the answer to because I have to
5 assume liability. That's up to the jury.

6 Q. Understand. But you heard Dr. Smith testify to this
7 jury that Great West does use the invention, didn't you?

8 A. That's what he said.

9 Q. Now, one of the things you relied on in your report were
10 conversations with -- with Mr. Ponder, right?

11 A. Yes.

12 Q. And when you talked to Mr. Ponder, did he give you --
13 did he tell you that the information he was providing to you
14 was marketing fluff?

15 A. I actually have to correct my prior answer.

16 I think that I briefly interviewed him, but
17 I remember his deposition transcript more.

18 Q. Okay.

19 A. And I heard him testify in trial, so that's why
20 I answered yes.

21 Q. Okay. Well, you cite to him in your report, too, don't
22 you?

23 A. That's fair.

24 Q. And when you talked to him, I guess during this brief
25 conversation, did he explain to you that a lot of the

1 documents contain marketing fluff?

2 A. He used different words, but I think that he described
3 that I needed to look carefully at -- at things from a
4 technical point of view.

5 Q. And -- and at the time that was going on, you already
6 knew Great West was a Defendant in this case, right?

7 A. Yes.

8 Q. Now, one of the documents you pointed to earlier --

9 MR. GILLILAND: If we could bring up GWX-0261, or,
10 actually, let's go to this slide.

11 Q. (By Mr. Gilliland) Okay. And on this slide, you're
12 pointing to a page out of GWX-0261, right?

13 A. Yes.

14 Q. And the information on this page is about the
15 transaction between Mount Hamilton Partners and Botalini
16 Partners, right?

17 A. Correct.

18 Q. And that transaction occurred all the way back in 2008,
19 right?

20 A. Correct.

21 Q. But you told the jury that this is what IV allocated in
22 June of 2015, correct?

23 A. That's what's in the document that was dated June of
24 2015.

25 Q. And when you say that's what's in the document, you're

1 relying on this footer down here in the bottom, right?

2 A. A couple of things I'm relying upon. That's one of the
3 things that I'm relying upon.

4 Q. And a footer in the document, you realize that that's
5 likely the date this document was printed for purposes of
6 this litigation.

7 Don't you understand that?

8 A. I do.

9 Q. Okay. In your work on this case, have you come to
10 understand how underwriting operates?

11 A. Yes. I have some understanding of that from other
12 areas, so -- and I've learned a little bit more in this
13 case, sure.

14 Q. Sure. And in this case, the Defendant insures truck
15 drivers, right?

16 A. Correct.

17 Q. And one of the processes of underwriting is evaluating
18 how much risk a potential trucking company presents to
19 Great -- Great West.

20 Isn't that part of what underwriting considers?

21 A. I think that's true.

22 Q. And they've got to consider how risky is this company so
23 we can decide whether to insure them or not?

24 A. In part. That's part of what the thought process is, as
25 I understand it.

1 Q. And another part -- part of that thought process is
2 how -- if -- well, let me start that over.

3 One of the other things underwriting has to
4 consider is how risky the company is so they can decide how
5 much of a premium to charge for selling them insurance,
6 right?

7 A. I would think so.

8 Q. And a big factor -- well, let me start that over.

9 At least a factor in how risky a company is, is who
10 are the drivers for that company, right?

11 A. It can be.

12 Q. It can be. And that's why I think -- as you saw in
13 here, some of the information and data that can be uploaded
14 and put into the portal is how many years of experience an
15 individual driver has.

16 Did you see that?

17 A. I saw that.

18 Q. And another thing that the portal allows for is
19 requesting the motor vehicle record or MVR for a particular
20 driver, right?

21 A. We've heard about that MVR, sure.

22 Q. And I think Mr. Foote said -- even in the driver
23 database, the driver stays in there so if they're involved
24 in a wreck, the driver stays connected to that wreck in the
25 database in case they turn up again?

1 A. I'm not sure he said exactly that, but what you're
2 saying seems reasonable to me.

3 Q. And it was the general gist of what he said, right?

4 A. I actually thought he said something else, but what
5 you're saying, I think I can also agree with.

6 Q. Okay. And all of those are reasons why it's important
7 from top to bottom for Great West to be able to gather
8 information about the drivers?

9 A. Sure.

10 Q. And when -- when a claim is made -- well, strike that.

11 MR. GILLILAND: Let's bring up Plaintiff's
12 Exhibit 212.

13 Q. (By Mr. Gilliland) Okay. And I'm showing you
14 Exhibit 212.

15 We discussed this yesterday with Mr. Ponder.
16 I think it's in your notebook, but I'm not a hundred percent
17 sure.

18 A. I think so.

19 Q. Well -- and we've got it on the screen. I'll just ask
20 you a couple of questions about it.

21 A. Oh, I found it.

22 Q. Oh, you found it, good. I did not find it in my binder.

23 A. It's in the other tab. It's actually -- if you look at
24 213, that's where 212 is -- 213 is behind 212.

25 Q. Ah, they're out of order, I guess.

1 A. I found them.

2 Q. Okay. Well, let me --

3 THE COURT: Now that you gentlemen -- now that you
4 gentlemen had a conversation about it, let's ask a question.

5 MR. GILLILAND: Yes, sir, Your Honor.

6 THE COURT: Okay.

7 Q. (By Mr. Gilliland) You heard Mr. Ponder testify about
8 Plaintiff's Exhibit 212 yesterday?

9 A. Yes.

10 Q. And you see up here in the top of Exhibit 212 where it's
11 talking about the insured portal, it has -- the second
12 sentence reads: The newly designed insured portal allows
13 insureds to access information on their own without needing
14 to call their agent, underwriter, or safety representative
15 for assistance.

16 Do you see that?

17 A. Yes.

18 Q. Did you make any attempt to value the cost savings of
19 those avoided phone calls?

20 A. I did.

21 Q. Okay. And how did you do that?

22 A. Well, I considered whether or not there's other ways of
23 accomplishing the same thing.

24 Q. Okay. But did you ever calculate how much it
25 would -- each of those calls would cost to pay somebody

1 to take them if they were not served using the insurance
2 portal?

3 A. I don't think that's the right way to do it. You can do
4 things another way.

5 MR. GILLILAND: I'll object as non-responsive, Your
6 Honor.

7 THE COURT: Restate the question, Mr. Gilliland.

8 MR. GILLILAND: Okay.

9 Q. (By Mr. Gilliland) Did you attempt to calculate a value
10 of those avoided phone calls?

11 A. No, and I can explain why.

12 Q. Now -- and I'm sure Mr. Gillam will give you the
13 opportunity if you'd like.

14 Let me ask another question.

15 Did -- you had -- you had talked a lot about
16 comparable sales, I guess, using a real estate analogy?

17 A. Yes.

18 Q. And if you -- if you are not careful when you're trying
19 to use -- well, let me start that over.

20 Does -- comparable sales does not take into account
21 the amount of use, does it?

22 A. It does.

23 Q. Well, comparable sales looks at how much other
24 transactions of similar properties would sell for, that's
25 what comparable sales is about, isn't it?

1 A. That's true.

2 Q. And if you're not real careful selecting your
3 comparables, you could severely undervalue a piece of
4 property, couldn't you?

5 A. You could.

6 Q. But the comparable sales is not looking at the value of
7 a piece of property for someone who's actually going to put
8 it to use, is it?

9 A. That's false.

10 Q. Okay. Well, let me ask you this then: If you were to
11 value a piece of property, would it make a difference in the
12 price of that property if it was on a lake or way down in an
13 isolated area where you couldn't even access it, and it was
14 all overgrown with weeds?

15 Would that make a difference?

16 A. I think there's probably other things that you'd need to
17 consider, but those certainly would be aspects that you'd
18 want to think about.

19 Q. And let's say you owned a piece of property where a
20 new -- or owned a golf course, would that generally be more
21 valuable than one that's not on a golf course, everything
22 else being equal?

23 A. No.

24 Q. Okay.

25 A. I mean, maybe I would say but --

1 Q. Maybe, okay. Well --

2 A. But I don't think you can say "yes" or "no."

3 Q. And -- and let me ask you this then: If -- would it
4 make a difference in valuing property if you valued it
5 11 years before a nice golf course was put in that abutted
6 that property?

7 Would the value be different?

8 A. It might.

9 Q. And -- and it might because if you valued it back before
10 anybody even thought about putting that golf course in, the
11 value of it would likely be a whole lot less than the value
12 after the golf course had been put in?

13 A. That's the part that depends. It depends what was there
14 before.

15 Q. Okay. And if there wasn't anything going on, if it was
16 just a glimmer in a developer's eye, then it might not be
17 worth near as much 11 years earlier as it is today, isn't
18 that true?

19 A. I don't understand your question.

20 Q. Sure. Here's what I'm getting at is, the application
21 that became the '177 patent was like that piece of rural
22 property back in 2008, and today it's more like the property
23 that's on the new Byron Nelson golf course in Dallas,
24 there's a significant difference when you look at the time
25 and the use of the property and the value of the property,

1 isn't there?

2 A. In that hypothetical? Are -- are you asking me in that
3 hypothetical? I don't understand your question then.

4 Q. Sure. Sure. I'm sure that's true.

5 I'm just saying that it depends a lot on the
6 conditions surrounding the piece of property, doesn't it?

7 A. It can. You have to look at what's changed, sure.

8 I agree with that.

9 Q. And that goes for whether it's real property or
10 intellectual property?

11 A. I agree.

12 MR. GILLILAND: Pass the witness, Your Honor.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. GILLAM:

16 Q. Mr. Bakewell, would you tell us whether it was in the
17 page that Mr. Gilliland pointed out to you or somewhere else
18 in your report what you did to look at the portal that's
19 involved in this case?

20 A. Sure. So the page that Mr. Gilliland was pointing to
21 described the deposition transcripts and then, generally
22 speaking, the materials that I reviewed. And there was a
23 sentence in there that said: I reviewed the materials in
24 Attachment C. And that's what I was referring to earlier
25 when he asked me that question.

1 That -- Attachment C has I don't know how many
2 pages, but it's many, many pages of what are called Bates
3 numbered documents. Those are the little numbers that we've
4 been seeing in the bottom right-hand corner of the documents
5 on the screen sometime. And I've got columns and pages of
6 things that are listed there.

7 And in there are materials -- printouts of the
8 website that I reviewed.

9 And then also are listed are all of what's called
10 the legal pleadings. And one of the documents in there is
11 the infringement contentions and a complaint.

12 I also reviewed Dr. Smith's report and
13 Dr. Crovella's reports. And in those, there's printouts and
14 descriptions of how the system works.

15 And then I also described that how on my own,
16 I conducted my own research, and I discussed that in my
17 report, too. And I went to look at YouTube videos on how
18 IBM WebSphere works, where people had modified to different
19 clients.

20 And I did research on Great West. And from all
21 that information, you can assemble it in your mind and see
22 how the system actually works. So I think that I did look
23 at the accused portal and the functionality that's accused.
24 Q. Was there anything that you heard from Ms. O'Neil or
25 Mr. Lasinski that even hints that they looked at it at all?

1 A. They said that they didn't at all, they -- that's what
2 they said.

3 Q. Now, Mr. Gilliland asked you about Exhibit 212 a few
4 moments ago. That was the thing that said insured portal.

5 Do you remember that?

6 A. Yes.

7 Q. Did you look at -- or have you had a chance to look at
8 the uncontested facts that were stipulated to between the
9 parties in this particular case?

10 A. I did.

11 Q. You understand that insured portal is no longer part of
12 this case based upon that stipulation?

13 A. That's my understanding.

14 Q. Nevertheless, let's talk about it for a second.

15 You pointed out -- or I asked you why didn't you
16 make an attempt to value -- I think you said unmade phone
17 calls or something of that nature?

18 A. I know what you're talking about. I remember, yes,
19 those questions.

20 Q. Yes. And you were going to give him a question, and he
21 said, well, I could ask you about that, so I'm going to ask
22 you about it.

23 Did you make an attempt? And if so, what did you
24 find? And if not, why not?

25 A. Well, I did, and I looked at non-infringing

1 alternatives. That's the part that we were talking about,
2 he was asking me about, and I wanted to answer.

3 The -- the way that you figure out a problem like
4 that is you don't just look at adding stuff up immediately.
5 You try to figure out what else you could have done. You
6 have to go back in time.

7 Remember, I had that street sign for non-infringing
8 alternatives. You have to go back before you get to the
9 fork in the road and figure out what else you could have
10 done and how much that would have cost.

11 And that's what I asked Dr. Crovella and Mr. Foote
12 about, and that's where I got answers about, well, how much
13 it cost to incrementally implement this functionality and
14 how much it would have cost to make a change. And it's less
15 than \$100,000.00.

16 MR. GILLAM: Could you pull up GWX-261, please?

17 Take that down, and let me make sure I've got my
18 exhibit right.

19 Q. (By Mr. Gillam) You remember the discussion
20 Mr. Gilliland had with you about the last 11 years and how
21 things had progressed and that type of thing?

22 A. Yes.

23 Q. What's the hypothetical negotiation date that
24 Mr. Lasinski used in this case?

25 A. He used 2013.

1 Q. Okay. So what we -- is his damage period 2013 through
2 what day?

3 A. Well, his damages period starts in 2015, and then he
4 goes for a few years after that. That was on that timeline
5 in the area that I marked out in red.

6 MR. GILLAM: Pass the witness, Your Honor.

7 THE COURT: Additional cross-examination?

8 MR. GILLILAND: Yes, Your Honor.

9 RE CROSS-EXAMINATION

10 BY MR. GILLILAND:

11 Q. Now, Mr. Bakewell, you had just referred to the fact
12 that there were a whole bunch of documents and things listed
13 in Exhibit C to your report, right?

14 A. Yes, Attachment C.

15 Q. Attachment C. And it would be misleading to say you've
16 read everything in Attachment C, wouldn't it?

17 A. I haven't read all of those myself. I work together
18 with a team of people. Some people help me review those
19 documents that work for Duff & Phelps.

20 Q. And -- and you relied on the other people that reviewed
21 those documents and provided you summaries of a lot of those
22 documents?

23 A. Sometimes.

24 Q. Okay. And that's what you -- that's how you did it?
25 You didn't actually read every single thing that's on there,

1 did you?

2 A. Sure. I work with some people that I value their input,
3 and they help me.

4 Q. And when was this lawsuit filed?

5 A. 2015.

6 Q. January of 2015, right?

7 A. That sounds correct.

8 Q. And in the last four years, Great West has not
9 implemented one single non-infringing alternative, have
10 they?

11 A. Not to my knowledge.

12 MR. GILLILAND: Pass the witness, Your Honor.

13 THE COURT: Any further direct?

14 MR. GILLAM: Yes, Your Honor, one more thing.

15 I would like you to pull up GWX-261, please.

16 REDIRECT EXAMINATION

17 BY MR. GILLAM:

18 Q. Now, you see at the bottom -- at the very bottom corner,
19 the 6/16/2015?

20 MR. GILLILAND: Your Honor, I would just object to
21 this as being beyond the scope of my recross.

22 THE COURT: I'll allow it. Overruled. Continue.

23 Q. (By Mr. Gillam) You see the bottom where it says
24 6/16/2015, and Mr. Gilliland said that -- that must be a
25 printing date?

1 Do you see that?

2 A. Yes.

3 Q. All right.

4 MR. GILLAM: You can take down the box there.

5 Q. (By Mr. Gillam) Would you look at the bottom of this
6 document itself, though, the bottom --

7 MR. GILLAM: Block that that you got the little
8 cursor by, block that out.

9 Could you raise that up for me?

10 Q. (By Mr. Gillam) What is the date -- the historical deal
11 notes date back with Cassandra Braget, what's the date on
12 that? Not the printing date that Mr. Gilliland talked
13 about, but what's the date on that particular part of the
14 document?

15 A. That's February 12th, 2015. This is a live document
16 that's continually updated. It's the runway system is what
17 it's called at Intellectual Ventures, and they keep all of
18 the information live about the -- the assets they have, and
19 that's what this is.

20 THE COURT: Mr. Bakewell, he didn't ask you all
21 that. He asked you what the date was. Answer the question,
22 but don't go beyond the question that's asked, okay?

23 THE WITNESS: Yes, sir, Your Honor.

24 THE COURT: All right.

25 Q. (By Mr. Gillam) So what is the date, not the printing

1 date, but what's the date, the historical deal note date
2 noted by Cassandra Braget on this particular document?

3 A. It's February 12th, 2015.

4 Q. After this particular lawsuit was filed?

5 A. Correct.

6 MR. GILLAM: Pass the witness.

7 THE COURT: Further cross?

8 MR. GILLILAND: Briefly, Your Honor.

9 Could we bring up the same document?

10 RECROSS-EXAMINATION

11 BY MR. GILLILAND:

12 Q. Okay. And if -- Mr. Bakewell, this document,
13 Defendant's Exhibit -- or GWX-0261 is talking about a
14 transaction that occurred back in 2008, right?

15 A. In part.

16 Q. In part?

17 MR. GILLILAND: Well, let's zoom in on the notes,
18 if you will, Mr. Cartwright?

19 Q. (By Mr. Gilliland) All of the kind faded information
20 there is entirely about the transaction between
21 Mount Hamilton Partners and Intellectual Ventures's entity,
22 called Botalini Tera, right?

23 A. That's what shows up in that window right there.

24 Q. And that's about the -- the actual sale between Botalini
25 and Mount Hamilton Partners that occurred back in 2008,

1 right?

2 A. What shows up right there in that window, yes.

3 Q. Okay. And if we look at the rest of the document --

4 MR. GILLILAND: If we zoom out, please?

5 Q. (By Mr. Gilliland) The rest of the document is just
6 documenting a transaction that occurred in 2008, except for
7 this one note that Ms. Braget -- Braget made about a change
8 in entity status in 2015, right?

9 A. That's all that shows up on that printed page.

10 Q. And that's what this document shows is just that in
11 2015, there was a change in the entity structure?

12 A. That's all that's on that printed page.

13 Q. Thank you.

14 MR. GILLILAND: Pass the witness.

15 THE COURT: Further direct?

16 MR. GILLAM: Could you keep it back up there,
17 please?

18 REDIRECT EXAMINATION

19 BY MR. GILLAM:

20 Q. And when you say about all this --

21 MR. GILLAM: And could you pull up the same box
22 that Mr. Gilliland had there a few moments ago -- pull that
23 up?

24 Q. (By Mr. Gillam) When you see this is all on the printed
25 page, you see the little bar over there on the right side?

1 A. Yes.

2 Q. It's hard to describe this, but the bar that's on the
3 right side of something like this, if you pull the bar down
4 or you pull the bar up, what does it show?

5 What -- what happens when you do that on a page
6 like this?

7 A. It's called a scroll bar. You can scroll through other
8 data that doesn't show up when the -- when it's printed out.
9 So there's more information here. This just happens to be
10 how this was printed.

11 Q. So what we happen to see on this particular document,
12 this printed page, is the scroll bar up to the top which
13 gives the early part of the history, correct?

14 A. Correct.

15 Q. What we don't have is what's at the bottom -- if you
16 were to pull that scroll bar down, what would be at the
17 bottom of that page?

18 A. Yes.

19 Q. But what we do know is that Cassandra Braget, whoever
20 she is, made some entry with respect to this particular
21 patent on February 12th of 2015?

22 A. That's correct.

23 MR. GILLAM: That's all I have, Your Honor.

24 Pass the witness.

25 THE COURT: Further cross?

1 MR. GILLILAND: Nothing further, Your Honor.

2 THE COURT: All right. Mr. Bakewell, you may step
3 down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Defendants, call your next witness.

6 MR. GILLAM: Your Honor, Defendant rests at this
7 time.

8 THE COURT: All right. Does Plaintiff have
9 rebuttal witnesses to call?

10 MR. GILLILAND: The Plaintiff does not. The
11 Plaintiff rests, Your Honor.

12 THE COURT: So both Plaintiff and Defendant rest
13 and close, subject to final jury instructions and closing
14 argument, correct?

15 MR. GILLILAND: Correct, Your Honor.

16 MR. GILLAM: Yes, Your Honor.

17 MR. BETTINGER: Yes, Your Honor.

18 THE COURT: All right. Thank you, gentlemen.

19 Ladies and gentlemen of the jury, that means you
20 have heard all the evidence in this case.

21 There are additional things the Court must take up
22 with counsel, but those additional things that come next are
23 to be taken up outside of your hearing.

24 What I'm getting to, ladies and gentlemen, is I'm
25 about to give you the rest of the day off. I expect it will

1 take most of the remainder of the day to -- for me to go
2 through the things I'm required to with counsel and be
3 prepared to give you my final instructions on the law and
4 then proceed to closing arguments.

5 It's my intention to do that first thing in the
6 morning. So in a moment, I'm going to excuse you for the
7 remainder of the day, but I do want you back tomorrow
8 morning ready to go at 8:30, assembled shortly before that
9 in the jury room.

10 And if everything goes as I anticipate during the
11 remainder of the day, then I'll begin tomorrow with my final
12 instructions to you, followed by arguments -- closing
13 arguments by Plaintiff and Defendant.

14 After that, I'll instruct you to retire and
15 deliberate on your verdict.

16 Follow all the instructions throughout the trial
17 that I've given you as relates to your service as jurors,
18 including, of course, not to discuss the case among
19 yourselves or with anyone else.

20 We are -- we are getting close to the end. It
21 would be a real travesty if any of these instructions were
22 to be disregarded or violated. So be very careful about
23 that.

24 Enjoy the remainder of the day, but be back
25 tomorrow morning ready to go at 8:30. And with that, ladies

1 and gentlemen, you're excused.

2 COURT SECURITY OFFICER: All rise for the jury.

3 (Jury out.)

4 THE COURT: All right. Please be seated.

5 Counsel, it's my intention to take a short
6 recess. I understand we just received by email the
7 updated and revised final jury instructions and verdict
8 form which you've submitted pursuant to my order
9 yesterday.

10 After a short recess, I'll return to the bench, at
11 which time I'll take up and hear any motions either party
12 wish to make under Rule 50(a).

13 We certainly don't need any electronic devices
14 making noise. I don't know whose phone just beeped, but
15 make sure it's off, and be thankful it happened when the
16 jury was out of the courtroom.

17 After I've heard motions under Rule 50(a), I'll
18 then conduct an informal charge conference in chambers where
19 we can jointly review and discuss, and I'll hear input from
20 both sides regarding the latest version of the charge and
21 verdict form.

22 After that's complete, I'll generate what I believe
23 to be the appropriate and final jury instruction and verdict
24 form. And having given both sides an opportunity to review
25 it, I'll then conduct a formal charge conference on the

1 record where any party may make what objections they believe
2 are appropriate and necessary.

3 All right. Are there questions before we take a
4 short recess?

5 MR. RUPP: Just one matter, Your Honor. May all
6 remaining witnesses who have not yet been excused be
7 excused?

8 THE COURT: Both sides have closed their cases, so
9 all the witness who have both testified or who were called
10 to testify but haven't been presented are excused.

11 MR. RUPP: Thank you, Your Honor.

12 MR. BETTINGER: No issues from Defendant, Your
13 Honor.

14 THE COURT: All right. Gentlemen, it's -- counsel,
15 it's about 10 minute after 10:00. Let's take 15 minutes,
16 and I'll be back, and we'll take up motions under Rule
17 50(a).

18 The Court stands in recess.

19 COURT SECURITY OFFICER: All rise.

20 (Recess.)

21 (Jury out.)

22 COURT SECURITY OFFICER: All rise.

23 THE COURT: Be seated, please.

24 All right. Counsel, the Court will now proceed to
25 take up any motions from either party to be offered under

1 Rule 50(a) of the Federal Rules of Civil Procedure.

2 Let me first ask just for purposes of
3 identification, does Plaintiff have motions to offer under
4 Rule 50(a)?

5 MR. GILLILAND: We do, Your Honor.

6 THE COURT: All right. Would you --

7 MR. GILLILAND: Oh, and if I may ask the Court,
8 Mr. Bettinger and myself are going to ask if we could be
9 excused for the motions to begin working on closing
10 argument, and Mr. Rupp will handle the motions with
11 Mr. Wilson for Plaintiff?

12 THE COURT: You can -- let's do this -- okay.
13 Well --

14 MR. GILLILAND: Whatever --

15 THE COURT: I have -- I have no problem with
16 counsel being absent from both this process and the charge
17 conference process as long as you're adequately staffed, and
18 both sides are.

19 So those of you that are going to deliver closing
20 arguments tomorrow are free to absent yourselves from the
21 remainder of today's activities.

22 My plan, unless we hit an unexpected impediment
23 along the way, my plan is to begin tomorrow morning with my
24 final jury instructions and then go directly into closing
25 arguments.

1 So if you and Mr. Bettinger are going to be the
2 sole presenters for closing argument tomorrow, then you
3 certainly have leave to be absent for the remainder of the
4 day.

5 MR. GILLILAND: Thank you.

6 MR. BETTINGER: Thank you, Your Honor.

7 THE COURT: Okay. Now, stay or leave, gentlemen,
8 it's up to you.

9 MR. GILLILAND: I wasn't sure on the appropriate
10 time to make our --

11 THE COURT: Right now.

12 MR. GILLILAND: Okay.

13 THE COURT: All right. So having clarified that,
14 let me ask someone from Plaintiff to identify just topically
15 the areas in which you intend to move for judgment as a
16 matter of law under Rule 50(a).

17 MR. RUPP: Your Honor, the Plaintiff will intend to
18 move for judgment as a matter of law under Rule 50(a) with
19 respect to the question of patentability under Section 101.

20 THE COURT: All right. Any other area, Mr. Rupp?

21 MR. RUPP: No, Your Honor.

22 THE COURT: All right. Does Plaintiff [sic] intend
23 to offer motions under Rule 50(a)?

24 MR. LANGFORD: Your Honor, Andrew Langford for
25 Great West.

1 We have four motions we intend to bring.

2 THE COURT: All right.

3 MR. LANGFORD: Number one, no infringement as a
4 matter law. Number two, invalidity for anticipation as a
5 matter of law. Number three, Step 2 of the patent
6 eligibility analysis as a matter of law. And, number four,
7 no damages as a matter of law.

8 THE COURT: All right. Well, let me -- let me
9 clarify one thing right now, and that is, previously the
10 Court has taken up and ruled on the patent eligibility issue
11 related to Section 101 of the Patent Act.

12 And by order and opinion docketed under
13 Docket No. 236, the Court has already said that the Court
14 finds that Claim 14 of the '177 patent is not directed to an
15 abstract concept under Alice Step 1.

16 Now, at the time I entered that order, out of an
17 abundance of caution, I went on to address Step 2 and said
18 there are questions there that need to be resolved, but that
19 was primarily to get us past that point as far as motion
20 practice. It was not to in any way limit or circumscribe
21 the effect of my ruling on the Step 1 analysis.

22 It's the Court's finding as a matter of law that
23 Claim 14 of the patent-in-suit is not directed to an
24 abstract concept. Therefore, it is eligible for patent
25 protection. And the 101 issue is decided already, as far as

1 the Court's concerned.

2 And the Court does not intend to present
3 instructions or a question in the verdict form to the jury
4 on it. And I do not intend to take it up under Rule 50(a),
5 because in my opinion, that matter has been addressed in a
6 matter that's final and complete pursuant to my order
7 docketed under 236 in this case.

8 So we can save ourselves some time on the
9 101 issue, all right?

10 MS. YANG: Your Honor, may I just address a comment
11 very briefly? Just to explain why it was that we did
12 present some evidence of the Step 2 analysis with
13 Dr. Crovella.

14 THE COURT: I'll certainly give you a brief
15 opportunity to make whatever statement you want for the
16 record, Ms. Yang.

17 MS. YANG: Thank you.

18 THE COURT: If you would -- if you would go to the
19 podium, though.

20 MS. YANG: Yes.

21 THE COURT: And then we're going to move on.

22 MS. YANG: Yes, Your Honor, understood.

23 So upon review of Your Honor's order on the Section
24 101 summary judgment motion, we did note that Your Honor had
25 identified that there was a question of material fact as to

1 Step 2 of the 101 analysis.

2 And so we have been in discussions with the
3 Plaintiff as to whether we needed in that -- as a result to
4 present that question to the jury in -- in view of the
5 identified question of material fact.

6 And so our understanding from conversations with
7 the Plaintiff -- with Plaintiff's counsel at the pre-trial
8 conference was that both sides believed that that was
9 something that was appropriate to present to the jury, and,
10 therefore, we requested that Dr. Crovella study this issue
11 and present it to the jury.

12 We understand the Court's position and ruling that
13 that is not something that is intended to be presented to
14 the jury, and simply wanted to note for the record that that
15 was the reason why we -- why we did so.

16 THE COURT: All right. The Court accepts your
17 statement, but to leave no doubt, the Court has already
18 ruled on the 101 issue.

19 MS. YANG: Understood, Your Honor.

20 THE COURT: All right. That being the case, the
21 Plaintiff's indication that they want to move with regard to
22 Section 101 and the Defendant's indication that they want to
23 move under 50(a) with regard to Step 2 of the
24 101 analysis are denied as moot.

25 That leaves us the infringement,

1 validity/anticipation, and damages issues to be presented by
2 Defendant under Rule 50(a).

3 Let me hear brief argument from Defendant on the
4 matter of infringement under Rule 50(a) at this time. And
5 then I'll hear a brief response from Defendants [sic].

6 We'll do this by substantive topic. I don't want
7 to hear all the arguments on all the motions. We'll do them
8 one at a time.

9 MR. LANGFORD: Thank you, Your Honor.

10 THE COURT: Go ahead.

11 MR. LANGFORD: With respect to infringement,
12 Plaintiff -- or, sorry, Defendant moves for judgment as a
13 matter of law because Plaintiff did not prove infringement
14 of Claim 14 as a matter of law in this case.

15 Claim 14 requires the centralized access point of
16 Claim 11 to be further operative to enable a user to manage
17 any content contributed by them.

18 In this case, it's an uncontested fact that
19 Plaintiff is accusing only two pages on the Great West
20 website of being a centralized access point and for
21 collecting the notice of uncontested facts of Docket 283,
22 and I'll address each of those two pages.

23 But we're entitled to judgment as a matter of law
24 because neither of those two accused pages is the claim
25 centralized access point operative to enable a user to

1 manage any content contributed by them.

2 Now, the first page that is accused here is the
3 Drivers List By Policy page on Great West's agent portal, an
4 example of which is GWX-494.

5 Now, IV did not meet its burden of proving the
6 Drivers List By Policy page is a centralized access point
7 operative to enable a user to manage any content contributed
8 by them because to the extent anything could be managed via
9 the Drivers List By Policy page, it is not content. It's an
10 uncontested fact that information about users is not
11 content, as required by Claim 14, as reflected in the notice
12 of uncontested facts of Docket 283.

13 And the Drivers List By Policy page only enables
14 users to manage information about users, not content, so it
15 cannot be the centralized access point of Claim 14 -- for
16 example, information like the name of the driver, the
17 driver's experience, or employment status.

18 There is no dispute that drivers can and do use
19 Great West's website -- excuse me. For example, Dr. Smith
20 conceded that drivers can be users of Great West's accused
21 website.

22 Mr. Foote gave unrebutted testimony that drivers do
23 use Great West's portal. They can and do use it.

24 And that is -- that shows that the Drivers List By
25 Policy page cannot be the centralized access point of

1 Claim 14.

2 Now, the other page that is accused of being a
3 centralized access point is the homepage on Great West's
4 employee portal. And the allegation here is a little more
5 nuanced, but the allegation of a Plaintiff is that via that
6 homepage, I can access another page called Report Rate. And
7 on that Report Rate page I allegedly can contribute and
8 manage content in the form of reports.

9 But uncontradicted evidence shows that reports,
10 once entered, cannot be edited or deleted. The Report Rate
11 feature only allows new reports to be entered into the
12 system, and, therefore, there is no management of content as
13 required by Claim 14.

14 Dr. Crovella testified that you are not managing
15 content if you are merely entering a new report and the old
16 report is unchanged.

17 Mr. Foote offered unrebutted factual testimony that
18 only new reports can be entered into the website through the
19 Report Rate feature. Once entered, they cannot be edited,
20 deleted, or updated in any way.

21 Dr. Smith conceded on cross-examination that
22 through the Report Rate feature, quote, data cannot be
23 removed. That's at the March 8th afternoon transcript
24 between 110:19 and 111:13.

25 THE COURT: Slow down a little bit, please.

1 MR. LANGFORD: I apologize, Your Honor.

2 THE COURT: That's all right. Just slow down.

3 MR. LANGFORD: Sure.

4 And he understands that that information must be
5 maintained by a regulation.

6 He also admitted that a corrected report is simply
7 adding a new -- a new policy. It's not managing an old one.

8 Therefore, the employee homepage and the Report
9 Rate page does not show infringement of Claim 14 because
10 users are not enabled to manage any content contributed by
11 them. And, therefore, we respectfully request judgment as a
12 matter of law that Great West does not infringe Claim 14,
13 Your Honor.

14 THE COURT: All right. Let me hear a response from
15 Plaintiff.

16 MR. RUPP: Your Honor, Plaintiff poses the Rule 50
17 motion with respect to infringement on the following basis:

18 As to the Drivers List By Policy contention made by
19 Defendants, this is not an undisputed fact or undisputed
20 contention that is there is no content. Rather, that this
21 constitutes information about users.

22 On the contrary, that is a hotly disputed fact, as
23 demonstrated by the testimony of Dr. Smith on that very
24 issue, as demonstrated by the cross-examination evidence
25 elicited from Mr. Foote with respect to the differentiation

1 that the Great West portal system makes between information
2 about users being the user name and the password stored in
3 the LDAP, and content, on the other hand, being substantive
4 policy data that's stored in a different part of the system
5 and accessed in different ways.

6 With respect to the employee homepage and the
7 reporting policy infringement read, the contention of the
8 Defendant that there is no management of the content is
9 likewise hotly disputed.

10 The jury has heard conflicting evidence on that
11 point, mainly through the testimony on direct examination of
12 Dr. Smith wherein he testified expressly that that does
13 constitute management of the contents because the subject
14 matter on which a report is based is being changed by the
15 addition of a new or different report that has different
16 contents.

17 Those same factual components were developed
18 through the cross-examination of Mr. Foote and the
19 cross-examination of Dr. Crovella. Each of those witnesses
20 conceded that the underlying information, which is the
21 content, for example, the mileage -- the Court will recall
22 that particular testimony -- is at variance between the
23 original report and the amended or corrected report.

24 Accordingly, we submit that Plaintiff has amply
25 satisfied its burden, and there is more than sufficient

1 evidence for the jury to consider.

2 THE COURT: All right. With regard to the
3 Defendant's motion for judgment as a matter of law
4 concerning the issue of infringement --

5 MR. LANGFORD: Your Honor, if I may?

6 THE COURT: Do you have something else?

7 MR. LANGFORD: Yeah. I apologize, Your Honor. If
8 I could briefly just raise one other point.

9 THE COURT: All right. I'm not -- I'm not
10 intending to let this be Mr. Gillam and Mr. Gilliland back
11 and forthwith -- Mr. Bakewell again.

12 MR. LANGFORD: It will not be, Your Honor.

13 Understood.

14 THE COURT: All right. It will not be.

15 Go ahead.

16 MR. LANGFORD: Your Honor, I just had one
17 additional point that I wanted to make for the record, and
18 this goes to a claim construction issue the Court decided
19 earlier in the case adversely to Great West.

20 And we just wanted to -- begging the Court's
21 indulgence, state our position on that on the record to
22 preserve the record.

23 The Court entered an order at Docket 279 construing
24 the claim term "manage any content" to mean manage one or
25 more stored content.

1 THE COURT: Let me ask you this, counsel. Why am I
2 hearing this in the middle of an argument on infringement on
3 Rule 50(a)?

4 MR. LANGFORD: Because, Your Honor, if -- if the
5 Court had entered our proposed instruction, then the
6 evidence of record in this case would have established
7 non-infringement as a matter of law. And out of an
8 abundance of caution, we simply wished to state that for
9 the record, Your Honor.

10 THE COURT: And you didn't think it was appropriate
11 to make that as a part of your initial argument under
12 Rule 50(a) regarding infringement?

13 MR. LANGFORD: Apologies, Your Honor.

14 THE COURT: Okay. I'm going to rule on the one --
15 on the infringement issue. You can come back to the claim
16 construction issue before we conclude argument under matters
17 related to 150 -- to Rule 50(a).

18 I certainly don't mind you preserving what you
19 think needs to be preserved in the record, but we'll cover
20 this before we complete the process. I don't see that this
21 is necessary to be a part of the infringement argument.

22 MR. LANGFORD: Understood, Your Honor. Thank you.

23 THE COURT: All right. I'm denying the motion by
24 Defendant under Rule 50(a) with regard to the issue of
25 infringement.

1 We'll next take up the issue of invalidity, and
2 I'll hear Defendant's argument in support of their motion
3 for judgment as a matter of law under Rule 50(a) regarding
4 the issue of invalidity.

5 MR. LANGFORD: Yes, Your Honor. We respectfully
6 move for judgment as a matter of law that Claim 14 is
7 invalid under 35 U.S.C. 102, under the Pellegrino reference.

8 Now, Dr. Crovella, our expert, exhaustively
9 explained at trial how the Pellegrino patent discloses each
10 and every element of Claim 11 and 14 and, therefore,
11 anticipates Claim 14 of the patent. Plaintiff has offered
12 no rebuttal case, whatsoever.

13 As Your Honor discovered, Plaintiff had a rebuttal
14 expert, Dr. Gray, ready to go, and he was, in fact, in court
15 yesterday, and then at 7:00 p.m. last night we were informed
16 that Dr. Gray would not be called.

17 The result being that the record has no evidence
18 contradicting Pellegrino's -- Dr. Crovella's testimony that
19 Pellegrino discloses all the elements of Claim 14. And we
20 cannot -- cannot envision how now there will be anything
21 more than lawyer argument challenging the evidence in this
22 case that Pellegrino anticipates Claim 14 of the
23 '177 patent.

24 And, therefore, we respectfully request judgment as
25 a matter of law on the issue of anticipation by Pellegrino,

1 Your Honor.

2 THE COURT: All right. Let me hear a responsive
3 argument from Plaintiff.

4 MR. RUPP: Your Honor, with respect to the Rule 50
5 motion on invalidity, Plaintiff does not agree that there
6 was no rebuttal evidence, whatsoever, as to Dr. Crovella's
7 testimony on direct examination as to his perspective on
8 whether or not Pellegrino anticipates each element in
9 Claim 11, and the additional requirement of Claim 14.

10 On the contrary, through cross-examination of
11 Dr. -- excuse me, of Dr. Crovella, evidence was elicited
12 from the witness that aspects of the Pellegrino reference,
13 and specifically with respect to whether or not it addresses
14 and discloses content as opposed to links to content, is
15 more than adequate to demonstrate that the Defendant has
16 failed to meet its burden of establishing invalidity by
17 clear and convincing evidence as a matter of law.

18 THE COURT: All right. Well, with regard to
19 Defendant's motion for judgment as a matter of law under
20 Rule 50(a) concerning the issue of invalidity, that motion
21 is denied.

22 Let me hear the Defendant's motion under
23 Rule 50(a) -- argument in support of Defendant's motion
24 under Rule 50(a) regarding the issue of damages.

25 MS. LEE: Good morning, Your Honor. Sharon Lee on

1 behalf of Defendant, Great West.

2 THE COURT: Good morning, Ms. Lee. Please proceed.

3 MS. LEE: Defendant, Great West, moves under
4 Rule 50(a) for judgment as a matter of law that Plaintiff
5 has failed to carry its burden of proof on damages because
6 the record does not reflect evidence sufficient to award
7 damages as a matter of law.

8 Plaintiff's damages case rests upon Mr. Lasinski's
9 damages opinion. His royalty calculation is made up of two
10 components: An alleged cost savings for Great West for
11 alleged contact which Mr. Lasinski valued at 2.75 and an
12 alleged number of avoided user contents due to the accused
13 web portals.

14 Both of these figures are untethered from the
15 allegedly infringing features of Great West's accused
16 portals, and neither have a legally sufficient evidentiary
17 basis.

18 First, with respect to the rate, Mr. Lasinski's
19 alleged cost savings to Great West per avoided contact is
20 not based on any actual cost savings to Great West. Rather,
21 they're based on cost savings to an entirely different
22 company, BITCO.

23 Mr. Lasinski provided no basis or justification for
24 using BITCO's cost savings information to assess Great --
25 Great West's cost savings attributable to the allegedly

1 infringing features of the accused portal.

2 And, in fact, both Mr. Lasinski and Ms. O'Neil, on
3 whom Mr. Lasinski relied, admitted that Great West and BITCO
4 have different clientele, different policy lines, different
5 management, and different IT systems.

6 Mr. Lasinski did not even know the type of
7 insurance that BITCO sells.

8 And, in addition, Mr. Lasinski admitted that he did
9 not know whether Great West's accused portal has the interim
10 audit functionality that BITCO attributed its cost savings
11 to.

12 And in any event, Mr. Lasinski admitted that such
13 functionality is not accused of infringement in this case.

14 As such, BITCO's data is an improper basis for a
15 damages award, and Mr. Lasinski's opinion using BITCO's cost
16 savings is unrelated to any accused feature of Great West's
17 accused portal.

18 With respect to the base, Mr. Lasinski's base is
19 legally insufficient because he failed to properly apportion
20 the number of portlet views which he equates with avoided
21 user contacts due to the accused portals.

22 It's undisputed that IV's infringement allegations
23 are limited to two web pages that allegedly meet the
24 centralized access point limitation of Claim 14, and that
25 the Drivers List By Policy page on the agent portal and the

1 homepage on the employee portal.

2 Nevertheless, Mr. Lasinski admitted to including
3 royalty based page views of web pages that are not alleged
4 to infringe Claim 14 of the '177 patent, including all of
5 the pages in the insured portal and the claim detail, policy
6 detail, claim status, policy list, accident detail, and
7 claims list by policy pages of the agent portal.

8 This failure to apportion caused Mr. Lasinski, by
9 his own admission, his base to be overstated by at least
10 75 percent.

11 Mr. Lasinski also relied on Ms. O'Neil as a
12 reasonableness check, but her opinion was based on her
13 incorrect assumption that the extent of infringement was the
14 entire accused portal.

15 And as we know from both the notice of uncontested
16 facts between the parties and the testimony of both
17 technical experts, her assumption was incorrect, and,
18 therefore, Mr. Lasinski's reliance on Ms. O'Neil for the
19 reasonableness of his calculation was also incorrect.

20 There's also no evidence in the record that
21 establishes that a single page view on any of the portal
22 pages results in one avoided user content to Great West.

23 And because both the rate and base that
24 Mr. Lasinski used to calculate his damages are legally
25 insufficient, we request judgment as a matter of law on the

1 issue of damages.

2 THE COURT: Let me hear Plaintiff's response,
3 please.

4 MR. RUPP: Your Honor, Plaintiff maintains with
5 respect to this Rule 50 motion by Defendants that
6 Intellectual Ventures has adequately discharged its burden
7 to reach the jury with respect to the question of damages
8 through the testimony of Mr. Lasinski, as well as amplified
9 by the cross-examination evidence elicited from the
10 Defendant's damages expert, Mr. Bakewell.

11 The testimony that the jury heard was that a
12 willing licensee using the appropriate methodology as
13 described by Mr. Lasinski would pay to a willing licensor a
14 reasonable royalty of \$20.3 million, that's at Page 14 of
15 the transcript of Mr. Lasinski's testimony. He described in
16 great detail the approach and methodology by which he
17 reached that determination.

18 The issue with respect to reliance on evidence from
19 an analogous company as one input to Mr. Lasinski's opinions
20 is not sufficient to support a Rule 50 motion, as testimony
21 in the record was that that was the best available on --
22 evidence on this point. That was uncontested by the
23 Defendants and was the subject of sworn testimony by both
24 Mr. Lasinski and Ms. O'Neil.

25 The balance of the Defendant's arguments with

1 respect to damages go to -- exclusively to the reliability
2 or accuracy of the damage's approach that was espoused by
3 the Plaintiff and by the Plaintiff's expert in his sworn
4 testimony. And that is an improper basis for a Rule 50
5 motion. Those are questions of credibility that must be
6 measured by the jury, not determined as a matter of law
7 pursuant to a Rule 50 motion.

8 THE COURT: All right. With regard to Defendant's
9 motion for judgment as a matter of law pursuant to
10 Rule 50(a) concerning the issue of damages, that motion is
11 denied.

12 Now, I'll hear argument from Defendants at this
13 juncture with regard to what is perceived by the Court to
14 effectively be their motion for reconsideration concerning
15 the Court's claim construction concerning the term "any."

16 Mr. Wilson [sic], I'll be happy to hear from you at
17 this time -- I'm sorry, Mr. Langford.

18 MR. LANGFORD: Thank you, Your Honor.

19 So as I said a moment ago, and I'll be brief, the
20 Court entered an order shortly before trial construing
21 "manage any content" in Claim 14 to mean "manage one or more
22 stored content," whereas, Great West proposed a claim
23 construction of "manage all stored content" for the reasons
24 stated in our briefing.

25 And we wish to state for the record, Your Honor,

1 that under Great West's proposed construction, there would
2 be no infringement as a matter of law because Great West's
3 employee portal allows employees to contribute content that
4 cannot be managed, for example, through the Report Rates
5 feature, as I just described in my argument earlier, and a
6 similar functionality is available to agents.

7 We just wanted to make that brief statement on the
8 record, recognizing that Your Honor has voiced an opinion on
9 this issue.

10 THE COURT: All right. With regard to that matter,
11 the Court denies any request for reconsideration or other
12 action in response to Defendant's arguments and leaves
13 undisturbed its current construction with regard to the term
14 "any."

15 Thank you, Mr. Langford.

16 All right. Are there any other matters, counsel,
17 to urged by either party seeking judgment as a matter of
18 law?

19 MR. RUPP: Nothing from the Plaintiff, Your Honor.

20 MS. YANG: Nothing from the Defendant, Your Honor.

21 THE COURT: All right. It is approximately 11:15.

22 Let me be candid with you all about my schedule.
23 I have a meeting at 12:15 that involves certain
24 administrative matters that I'm going to have to be involved
25 in concerning my position as Chief Judge of the district.

1 I expect that meeting not to last more than 30 or
2 40 minutes. Given the time that we have in light of how the
3 evidence has progressed, I see no reason why we can't begin
4 the informal charge conference in chambers at 1:00 o'clock.
5 That will give you an extended lunch hour, but given the
6 demands on my schedule between now and then, I don't know
7 how we can begin and complete it and still allow me to be at
8 that other meeting.

9 So we're going to recess at this point, and I'll
10 see counsel for both sides in chambers at 1:00 o'clock, at
11 which time I'll conduct an informal charge conference.

12 Let me make this clear. I welcome the attendance
13 and participation by all the counsel on both sides. This is
14 often an opportunity where young lawyers who don't get a
15 chance to take witnesses during the trial have an
16 opportunity to be involved and perhaps enter into the more
17 informal input and discussion regarding both the proposed
18 charge and the verdict form.

19 So please feel free, and I would encourage you to
20 bring everybody on your trial teams, other than those that
21 are obviously absent preparing for closing arguments.

22 But I will see those who are participating in the
23 informal charge conference in chambers at 1:00 o'clock. And
24 until then, we stand in recess.

25 COURT SECURITY OFFICER: All rise.

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(Recess.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

3/12/19
Date